Version No. 102

Fisheries Act 1995

No. 92 of 1995

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Version No. 102

Fisheries Act 1995

No. 92 of 1995

Version incorporating amendments as at
10 February 2025

The Parliament of Victoria enacts as follows:

Part 1—Preliminary

1 Purpose

The purpose of this Act is to—

(a) provide a modern legislative framework for the regulation, management and conservation of Victorian fisheries including aquatic habitats;

(b) reform the law relating to Victorian fisheries;

(c) repeal the **Fisheries Act 1968**;

(d) make consequential amendments to other Acts.

2 Commencement

(1) Subject to subsection (2), this Act comes into operation on a day or days to be proclaimed.

S. 2(2) substituted by No. 5/1997 s. 3.

(2) If a provision of this Act does not come into operation before 1 January 1999, it comes into operation on that day.

S. 2(3) repealed by No. 5/1997 s. 3.

* * * * *

3 Objectives of Act

The objectives of this Act are—

(a) to provide for the management, development and use of Victoria's fisheries, aquaculture industries and associated aquatic biological resources in an efficient, effective and ecologically sustainable manner;

(b) to protect and conserve fisheries resources, habitats and ecosystems including the maintenance of aquatic ecological processes and genetic diversity;

(c) to promote sustainable commercial fishing and viable aquaculture industries and quality recreational fishing opportunities for the benefit of present and future generations;

(d) to facilitate access to fisheries resources for commercial, recreational, traditional and non-consumptive uses;

S. 3(e) substituted by No. 108/2003 s. 23.

(e) to promote the commercial fishing industry and to facilitate the rationalisation and restructuring of the industry;

(f) to encourage the participation of resource users and the community in fisheries management.

S. 3A inserted by No. 35/2009 s. 27.

3A Consultation principles

S. 3A(1) amended by No. 68/2016 s. 49(1).

(1) To the extent that it is practicable, the following consultation principles apply to decisions made by the Minister, Secretary or Victorian Fisheries Authority under this Act, which affect the use and conservation of Victoria's fisheries resources—

(a) the purpose of consultation and any consultation process should be clear, open, timely and transparent;

(b) the level of consultation should reflect the likely impact of decisions on persons and fisheries resources;

(c) the consultation process should be adequately resourced;

(d) the consultation process should be flexible and designed to take into account the number and type of persons to be consulted and their ability to contribute to the process;

(e) the consultation process should involve consideration of representative advice which represents the views and values of the persons represented;

(f) representative advice in relation to the following persons or groups should be considered during any consultation process —

(i) recreational fishers;

(ii) commercial fishers;

(iii) aquaculture operators;

(iv) conservation groups;

(v) indigenous groups;

(g) the consultation process should consider expert advice, which should be obtained from the most appropriate provider;

(h) any expert advice obtained during the consultation process should be made available to persons participating in the consultation process.

(2) Without limiting the generality of subsection (1), for the purposes of that subsection, the following decisions are taken to affect the use and conservation of Victoria's fisheries resources—

(a) a decision by the Minister to declare or amend a management plan under Part 3;

S. 3A(2)(b) amended by No. 68/2016 s. 49(2).

(b) a decision by the Victorian Fisheries Authority to vary a class of fishery licence under section 54(1)(c);

S. 3A(2)(c) amended by No. 68/2016 s. 49(2).

(c) a decision under section 54(1)(d) by the Victorian Fisheries Authority to vary or revoke a condition imposed by the Victorian Fisheries Authority, or to impose a new condition, on a class of fishery licence;

(d) a decision by the Minister to give, revoke or amend a direction on matters relating to the management of fisheries or zones in a fishery under section 61;

(e) a decision by the Minister to make, revoke or amend a quota order in relation to a fishery under section 64, 64A, 66C or 66D;

(f) a decision by the Minister to make, revoke or amend an order declaring sub-zones in a quota fishery under section 64AB or 66E;

(g) a decision by the Minister to appoint a person as a member of the Commercial Fisheries Licensing Panel under section 132(2)(c) or 132(2)(d);

S. 3A(2)(h) repealed by No. 40/2019 s. 10.

* * * * *

(i) decisions relating to the making and content of regulations in respect of royalties and levies imposed in accordance with sections 150 and 151;

(j) decisions by the Minister relating to priorities for the disbursement of funds that may be paid out of the Recreational Fishing Licence Trust Account under section 151B;

(k) a decision by the Minister to make a fisheries notice under section 152(1).

(3) This section does not apply in relation to the following decisions—

(a) decisions which are specific to an individual licence or permit, the holder of a licence or permit or a person acting on behalf of a holder of a licence or permit;

(b) reviewable decisions within the meaning of section 137.

(4) In this section ***person*** includes an association or body.

S. 4 (Heading) inserted by No. 35/2009 s. 50(1).

4 Definitions and interpretative provisions

(1) In this Act—

S. 4(1) def. of *abalone* inserted by No. 5/1997 s. 4(1)(b).

abalone means blacklip and greenlip abalone and includes all other species, forms, races and hybrids of abalone;

S. 4(1) def. of *access licence* substituted by No. 5/1997 s. 4(1)(b).

access licence means a licence issued under section 38;

S. 4(1) def. of *adjusting fishery* repealed by No. 5/1997 s. 4(1)(a).

* * * * *

angle means use a line (whether or not attached to a rod) for the purpose of taking fish;

S. 4(1) def. of *appointed day* substituted by No. 5/1997 s. 4(1)(c).

appointed day means the appointed day or the relevant appointed day specified under section 155(3);

S. 4(1) def. of *approved code of fishing practice* repealed by No. 5/1997 s. 4(1)(a).

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S. 4(1) def. of *aquaculture licence* substituted by No. 5/1997 s. 4(1)(c).

aquaculture licence means a licence issued under section 43;

aquatic invertebrate means an invertebrate that lives in water for the whole or part of its life cycle;

arrangement means an arrangement made by the State with the Commonwealth under this Act whether or not it is also made with another State or other States and an arrangement made by the State with another State or States;

S. 4(1) def. of *associated offence* inserted by No. 69/2004 s. 5(1).

associated offence has the meaning set out in section 98(1);

S. 4(1) def. of *Australian lawyer* inserted by No. 18/2005 s. 18(Sch. 1 item 44.1), repealed by No. 17/2014 s. 160(Sch. 2 item 44).

* * * * *

S. 4(1) def. of *authorised officer* amended by No. 68/2016 s. 50(b).

authorised officer means a person appointed as an authorised officer under the **Conservation, Forests and Lands Act 1987** for the purposes of this Act, a person appointed under Part 3 of the **Victorian Fisheries Authority Act 2016** or the chief executive officer;

S. 4(1) def. of *blacklip abalone* inserted by No. 58/2005 s. 3(1).

blacklip abalone, in relation to abalone quota management, catch and size limits and closed seasons, means—

(a) all species of abalone other than greenlip abalone; and

(b) all other forms, races and hybrids of abalone;

boat means any means of transportation on water;

S. 4(1) def. of *carcass* inserted by No. 35/2009 s. 50(2).

carcass means

(a) in relation to shark or elephantfish, the body of a shark or elephantfish which is not cut or mutilated in any manner other than to remove the gut and head forward and clear of the posterior gill slit; and

(b) in relation to scale fish, the body of a fish which is not cut or mutilated in any manner other than to remove the gut or gills or scale the fish; and

(c) in relation to spiny freshwater crayfish, the body of a crayfish which—

(i) is not cut in any way other than to remove one or more legs or claws; or

(ii) is not mutilated in any way other than the absence of one or more legs or claws;

S. 4(1) def. of *catch limit* inserted by No. 5/1997 s. 4(1)(d).

catch limit means any limit imposed under this Act on the quantity or type of fish or fishing bait that may be taken, possessed or controlled in any specified circumstances, regardless of—

(a) whether the limit is expressed in terms of numbers, volume, weight, size or value;

(b) how the fish are specified;

(c) whether the circumstances refer to how, when, where or by whom the taking, possessing or controlling occurs;

(d) whether the limit applies to the whole, or only a part, of Victoria—

and includes trip, possession and bag limits, but does not include any limit relating to total allowable catches set under a quota order or to individual quotas or individual quota units;

S. 4(1) def. of *chief executive officer* inserted by No. 68/2016 s. 50(a).

chief executive officer means the chief executive officer of the Victorian Fisheries Authority;

S. 4(1) def. of *closed season* substituted by No. 5/1997 s. 4(1)(d).

closed season in relation to a species of fish means any time or period during which the taking of fish of that species is prohibited under this Act;

coastal waters in relation to the State has the same meaning as it has in the Commonwealth Act;

S. 4(1) def. of *commercial abalone equipment* substituted by No. 5/1997 s. 4(1)(e).

commercial abalone equipment means any device or mechanical thing that is designed for use, or that is capable of being used, for or in connection with the taking of abalone, and includes any underwater breathing apparatus, knife, probe, lever, iron or bar;

commercial aquaculture equipment means any equipment which is prescribed to be commercial aquaculture equipment;

Commercial Fisheries Licensing Panel means the Commercial Fisheries Licensing Panel referred to in section 132;

S. 4(1) def. of *commercial fishing equipment* substituted by No. 5/1997 s. 4(1)(f), amended by No. 51/2007 s. 3(1)(a) (2)(a) (b).

commercial fishing equipment means—

(a) any fish trap, hoop net or fishing net (other than recreational fishing equipment when used by a recreational fisher in accordance with this Act);

(b) any electrical or sonar device that is designed for use, or that is capable of being used, for or in connection with the taking of fish;

(c) any other device or mechanical thing that is designed for use, or that is capable of being used, for or in connection with the taking of fish (including any tipper used in connection with a scallop dredge);

(d) any yabby pot or crab pot;

(e) any drop line or fishing line left fixed or set in water (including fishing lines, hooks and snoods designed to be fixed or set but not yet fixed or set) whether

or not the line, hook or snood is fixed or set from the shore or from a buoy or other object, but not including handlines, rods and reels that are being used by a recreational fisher in accordance with this Act;

(f) any recreational fishing equipment when being used by or under the supervision of a fishery licence or permit holder (or the agent of such a holder) as part of a commercial fishing activity;

(g) any other equipment that the regulations state is commercial fishing equipment;

(h) any fishing dredge, rock lobster pot or longline—

but does not include commercial abalone equipment unless, in a particular case, that equipment is also designed for use, or is capable of being used, for or in connection with the commercial taking of fish other than abalone;

S. 4(1) def. of *commercial fishing licence* repealed by No. 5/1997 s. 4(1)(a).

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S. 4(1) def. of *commercial quantity* inserted by No. 108/2003 s. 3, amended by No. 35/2009 s. 50(3), substituted by No. 40/2019 s. 11(1).

commercial quantity, in relation to any priority species, means the quantity of fish prescribed in respect of that priority species;

Commonwealth Act means the Fisheries Management Act 1991 of the Commonwealth;

Commonwealth Minister means the Minister for the time being administering the Commonwealth Act and any other Minister exercising powers and performing functions pursuant to section 60 of the Commonwealth Act;

Commonwealth proclaimed waters means the Australian Fishing Zone (AFZ) as defined under the Commonwealth Act;

S. 4(1) def. of *condition* inserted by No. 5/1997 s. 4(1)(g).

condition, in relation to a licence or permit, includes any restriction that applies to the licence or permit;

S. 4(1) def. of *consultative body* repealed by No. 35/2009 s. 28.

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S. 4(1) def. of *co-operative* inserted by No. 108/2003 s. 29(1), amended by No. 9/2013 s. 42(Sch. 2 item 9).

co-operative means a body registered as a co-operative—

(a) under the Co-operatives National Law (Victoria); or

(b) under an equivalent law of another Australian jurisdiction;

S. 4(1) def. of *corporation* inserted by No. 108/2003 s. 29(1).

corporation means a corporation that—

(a) has a registered office in Australia; and

(b) that holds an Australian Company Number;

S. 4(1) def. of *Council* inserted by No. 64/2013 s. 3(3).

Council means the Fisheries Advisory Council established under Part 6;

court means the Magistrates' Court or any other court of competent jurisdiction;

S. 4(1) def. of *declared fishery* repealed by No. 5/1997 s. 4(1)(a).

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S. 4(1) def. of *Department* inserted by No. 108/2003 s. 3, amended by No. 70/2013 s. 4(Sch. 2 item 18.1), substituted by No. 68/2016 s. 50(c).

Department means the Department of Economic Development, Jobs, Transport and Resources;

S. 4(1) def. of *designated licence condition* inserted by No. 5/1997 s. 4(1)(h).

designated licence condition means a licence or permit condition that the regulations specify as a designated licence condition for the purposes of this Act;

S. 4(1) def. of *developing fishery* substituted by No. 5/1997 s. 4(1)(h).

developing fishery means a fishery that is not to be managed by the granting of renewable licences and that the regulations, or a Ministerial direction, define as a developing fishery;

S. 4(1) def. of *fish receiver's licence* inserted by No. 5/1997 s. 4(1)(h), amended as *fish receiver licence* by No. 35/2009 s. 50(4)(a).

fish receiver licence means a licence issued under section 41;

S. 4(1) defs of *endorsement*, *export fishery* repealed by No. 5/1997 s. 4(1)(a).

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S. 4(1) def. of *Fisheries Co-Management Council* repealed by No. 35/2009 s. 28.

* * * * *

fisheries notice means a fisheries notice made under section 152;

fisheries reserve means a fisheries reserve declared under section 88;

S. 4(1) def. of *fishery committee* repealed by No. 35/2009 s. 28.

* * * * *

S. 4(1) def. of *fishery licence* amended by Nos 5/1997 s. 4(1)(i)(i)(ii), 35/2009 s. 50(4)(b).

fishery licence means—

(a) an access licence; or

* * * * *

(c) an aquaculture licence; or

(d) a recreational fishery licence; or

(e) a fish receiver licence; or

(f) any other category of licence created by the regulations under clause 3.1 of Schedule 3;

S. 4(1) def. of *fishing bait* inserted by No. 5/1997 s. 4(1)(j).

fishing bait means any species of fauna declared to be fishing bait under section 6;

foreign boat has the same meaning as in the Commonwealth Act;

S. 4(1) def. of *Gippsland Lakes* inserted by No. 35/2019 s. 3.

Gippsland Lakes means the total area of all waters bounded by a line commencing at the seaward end of the western pier at the entrance wall at the entrance to the Gippsland Lakes, continuing in a generally north-westerly direction to the shoreward end of that pier then following the shoreline along the mean high water mark of such waters in a generally clockwise direction to the shoreward end of the eastern pier at the entrance wall at the entrance to the Gippsland Lakes, then following that wall to its seaward end, then in a generally westerly direction to the commencement of that line, but does not include the waters east of Eastern Beach Road or any river, creek or stream flowing into the Gippsland Lakes (except Chinaman's Creek and Boxes Creek which flow into and form part of Bancroft Bay);

S. 4(1) def. of *greenlip abalone* inserted by No. 58/2005 s. 3(1).

greenlip abalone, in relation to abalone quota management, catch and size limits and closed seasons, means abalone of the species Haliotis laevigata;

S. 4(1) def. of *individual quota* amended by No. 5/1997 s. 4(1)(k).

individual quota means the number of quota units (including a portion of a quota unit) allocated to an access licence by a quota order, whether as part of a total allowable catch or otherwise;

S. 4(1) def. of *individual quota unit* substituted by No. 5/1997 s. 4(1)(l), amended by No. 58/2005 s. 3(2)(a).

individual quota unit means a quantity of a species of fish (by number, volume, weight or value) declared under section 64A(1)(b) or 66D(1)(b) to be the individual quota unit for that species;

S. 4(1) def. of *inland waters* amended by No. 5/1997 s. 4(1)(m)(i)(ii).

inland waters means—

(a) any swamp or lake other than the Gippsland Lakes, Lake Tyers, the Lower Lake of Mallacoota Inlet and Wingan Inlet;

(b) any waterway, channel or anabranch from its mouth to its source and any inlet, backwater or lagoon connected with it;

(c) any other lagoon, backwater, anabranch or billabong;

(d) any reservoir, dam, tank, channel or works for water storage or distribution vested in or under the control of the Crown or a public authority;

(e) any other waters declared by the regulations to be inland waters—

but does not include any water or waters which is private property;

S. 4(1) def. of *input managed fishery* repealed by No. 5/1997 s. 4(1)(a).

* * * * *

Joint Authority means any Joint Authority established under Part 5 of the Commonwealth Act of which the Minister is a member;

Joint Authority fishery means a fishery in respect of which there is in force an arrangement under Part 2 by which the fishery is under the management of a Joint Authority;

S. 4(1) def. of *licence* amended by No. 5/1997 s. 4(1)(n).

licence means—

(a) a fishery licence; or

(b) any category of licence created by the regulations under clause 3.2 of Schedule 3;

S. 4(1) def. of *Licensing Appeals Tribunal* repealed by No. 40/2019 s. 11(3).

* * * * *

management plan means a management plan declared under Part 3;

S. 4(1) def. of *marine waters* substituted by No. 5/1997 s. 4(1)(o).

marine waters means Victorian waters other than —

(a) inland waters;

(b) any waters that are private property;

S. 4(1) def. of *maximum size* inserted by No. 40/2019 s. 11(2).

maximum size, in relation to a species of fish, means the maximum size for that species of fish specified by the regulations or in a fisheries notice;

S. 4(1) def. of *minimum size* inserted by No. 40/2019 s. 11(2).

minimum size, in relation to a species of fish, means the minimum size for that species of fish specified by the regulations or in a fisheries notice;

S. 4(1) def. of *Ministerial direction* inserted by No. 5/1997 s. 4(1)(o).

Ministerial direction means a direction given under section 61;

noxious aquatic species means a noxious aquatic species declared under section 75;

S. 4(1) def. of *open season* substituted by No. 5/1997 s. 4(1)(p).

open season in relation to a species of fish means any time or period during which the taking of fish of that species is not prohibited under this Act or during which the taking of fish of that species is allowed under this Act;

Order in Council means an Order made by the Governor in Council and published in the Government Gazette;

S. 4(1) def. of *permit* amended by No. 5/1997 s. 4(1)(q).

permit means—

(a) a general permit under section 49;

(b) a protected aquatic biota permit under section 72; or

(c) a noxious aquatic species permit under section 81; or

(d) any other category of permit issued in accordance with the regulations;

S. 4(1) def. of *police officer* inserted by No. 37/2014 s. 10(Sch. item 65.1).

police officer has the same meaning as in the **Victoria Police Act 2013**;

S. 4(1) def. of *priority species* inserted by No. 5/1997 s. 4(1)(r), amended by No. 35/2009 s. 50(5).

priority species means—

(a) abalone, rock lobster or Murray cod; and

(b) any other species of fish that the regulations state are a priority species;

process means shell, skin, shuck, fillet, dismember, mince, open, cut, break, cook, pack, chill, freeze, can, preserve or otherwise treat;

protected aquatic biota means any taxon or community of aquatic flora or fauna declared to be protected aquatic biota under section 69;

protected waters means—

(a) Victorian waters; and

(b) any aquarium or hatchery or any other waters in Victoria whether or not private property;

public authority means any Government Department or any body corporate or unincorporate established under any Act for a public purpose;

S. 4(1) def. of *quota fishery* inserted by No. 80/2000 s. 3(b), amended by No. 58/2005 s. 3(2)(b).

quota fishery means a fishery, or a specified zone or zones of a fishery, that is the subject of a declaration under section 64(1)(a) or 66C(1)(a);

S. 4(1) def. of *quota managed fishery* repealed by No. 5/1997 s. 4(1)(a).

* * * * *

S. 4(1) def. of *quota notice* substituted by No. 5/1997 s. 4(1)(s).

quota notice means a notice issued under section 65;

S. 4(1) def. of *quota order* inserted by No. 5/1997 s. 4(1)(s), amended by Nos 80/2000 s. 3(a), 58/2005 s. 3(2)(c).

quota order means an order issued under section 64, 64A, 66C or 66D;

S. 4(1) def. of *quota period* inserted by No. 5/1997 s. 4(1)(s).

quota period means any period specified in a quota order as the period over which a total allowable catch or an individual quota is to apply;

S. 4(1) def. of *recognised peak body* repealed by No. 35/2009 s. 28.

* * * * *

S. 4(1) def. of *recreational fishery licence* inserted by No. 5/1997 s. 4(1)(t).

recreational fishery licence means a licence issued under section 45 or a group recreational fishery licence issued under section 46;

S. 4(1) def. of *recreational fishing equipment* inserted by No. 51/2007 s. 3(2)(c).

recreational fishing equipment means any fishing equipment prescribed in the regulations to be recreational fishing equipment;

S. 4(1) def. of *recreational fishing licence* repealed by No. 5/1997 s. 4(1)(t).

* * * * *

S. 4(1) def. of *register* repealed by No. 5/1997 s. 4(1)(a).

* * * * *

S. 4(1) def. of *representative body* inserted by No. 64/2013 s. 3(1).

representative body means an organisation that represents—

(a) commercial fishing interests; or

(b) seafood industry interests; or

(c) aquaculture interests; or

(d) recreational fishing interests;

S. 4(1) def. of *rock lobster* inserted by No. 5/1997 s. 4(1)(u), amended by No. 64/2013 s. 3(2).

rock lobster means an animal of the family palinuridae;

S. 4(1) def. of *Secretary* substituted by Nos 76/1998 s. 8, 56/2003 s. 3, amended by No. 70/2013 s. 4(Sch. 2 item 18.2), substituted by No. 68/2016 s. 50(d).

Secretary means the Secretary to the Department of Economic Development, Jobs, Transport and Resources;

sell includes—

(a) barter; and

(b) exchange; and

(c) agree or offer to sell; and

(d) receive, have in possession or expose for sale; and

(e) send, forward, deliver or consign for sale; and

(f) sell for resale; and

(g) cause, permit or attempt any of the acts or things referred to in paragraphs (a) to (f);

S. 4(1) def. of *specially managed fishery* repealed by No. 5/1997 s. 4(1)(a).

* * * * *

S. 4(1) def. of *stock* inserted by No. 51/2007 s. 3(1)(b).

stock in relation to fish, includes the releasing, putting or introducing of fish into waters;

take means gain possession or control by any means;

S. 4(1) defs of *taxon*, *transferable fishery licence* repealed by No. 5/1997 s. 4(1)(a).

* * * * *

S. 4(1) def. of *vessel monitoring system* inserted by No. 80/2000 s. 3(b), amended by No. 68/2016 s. 50(e).

vessel monitoring system means a navigational measuring system that is suitable for installation on a boat and that is capable of—

(a) determining the location and activities of the boat; and

(b) transmitting data in relation to that location and those activities to the Secretary or the Secretary's delegate via a satellite communication system;

S. 4(1) def. of *Victorian Fisheries Authority* inserted by No. 68/2016 s. 50(a).

Victorian Fisheries Authority means the Victorian Fisheries Authority established under the **Victorian Fisheries Authority Act 2016**.

S. 4(2) substituted by No. 5/1997 s. 4(2).

(2) A reference to "this Act", "under this Act" or "by this Act" includes a reference to any regulations, fisheries notice, Order in Council, notice, declaration, licence, permit order, Ministerial direction or other document or

instrument made or issued under this Act, unless inconsistent with the context or subject matter.

S. 4(3) substituted by No. 5/1997 s. 4(2).

(3) For the purposes of this Act, any measurements fixed with respect to the taking, possession or sale of any species of fish throughout Victoria or in some part or parts of Victoria are the minimum permissible measurements applicable with respect to the taking, possession or sale of fish of that species, unless the contrary intention appears.

S. 4(4) substituted by No. 5/1997 s. 4(2).

(4) Any fish that is less than the minimum measurement fixed for fish of that species is referred to in this Act as undersized.

(5) In this Act, any reference to "measurement" or "size" or any derivatives thereof is to be read and construed as including reference to "weight".

(6) Subject to any express provision to the contrary, a reference in this Act to the weight of fish is to be read and construed as a reference to the whole weight of the fish, being the weight of the fish before any processing (other than freezing) commences and before any part of the fish is removed.

S. 4(7) substituted by No. 5/1997 s. 4(3).

(7) A reference to "he or she" or to "him or her" is to be read as including a reference to "it", if the context permits.

S. 4(7A) inserted by No. 69/2004 s. 11(3).

(7A) A reference to "his or her" is to be read as including a reference to "its", if the context permits.

S. 4(8) inserted by No. 5/1997 s. 4(3).

(8) A reference to an individual quota unit includes a reference to a fraction of an individual quota unit, unless a contrary intention appears.

S. 4(9) inserted by No. 5/1997 s. 4(3).

(9) A person who is exempted under this Act from any provision or requirement under this Act is to be treated as if he or she was authorised under this

Act to do, or not do, the thing that he or she is exempted from doing, or not doing.

S. 4(10) inserted by No. 34/2006 s. 3.

(10) If an arrangement under Part 2 is varied, a reference in this Act to the arrangement is a reference to the arrangement as varied.

S. 4(11) inserted by No. 34/2006 s. 3.

(11) A reference to a fishery that is to be managed in accordance with the law of the State pursuant to an arrangement under Part 2 includes a reference to a part of such a fishery.

S. 4(12) inserted by No. 35/2009 s. 50(6).

(12) A reference in any subordinate instrument made under this Act or in any other document of any kind to a "fish receiver's licence" or a "fish receivers' licence" is to be read and construed as a reference to a "fish receiver licence" or any derivative thereof so far as it applies to any period on or after the commencement of section 50(4) of the **Primary Industries Legislation Amendment Act 2009**, unless the contrary intention appears.

5 Definition of *fish*

(1) In this Act, ***fish*** means—

S. 5(1)(a) amended by No. 5/1997 s. 50(1)(a)(i).

(a) all species of vertebrate aquatic fauna other than mammals, reptiles, birds and amphibians;

(b) sharks, rays, lampreys and other cartilaginous fish;

(c) oysters and other aquatic molluscs;

S. 5(1)(d) amended by No. 35/2009 s. 51.

(d) aquatic crustaceans;

(e) echinoderms;

S. 5(1)(f) amended by No. 5/1997 s. 50(1)(a)(ii).

(f) any other species of aquatic invertebrate declared to be fish under subsection (2).

S. 5(2) amended by No. 5/1997 s. 50(1)(a)(ii).

(2) The Governor in Council may by Order in Council declare a species of aquatic invertebrate to be fish for the purposes of this Act.

(3) A reference in this Act to fish includes a reference to—

(a) fish in any form whether—

(i) alive or dead;

(ii) raw, cooked, preserved or processed in any manner whatsoever;

(b) fish of either sex;

(c) fish ova;

(d) part of a fish.

S. 5(4) substituted by No. 5/1997 s. 50(2).

(4) A reference in this Act to fish may be made by reference to the species, geographical location, number, weight or other description or classification of the fish.

S. 6 amended by No. 5/1997 s. 50(1)(b).

6 Declaration of *fishing bait*

The Governor in Council may by Order in Council declare a species of fauna which is not protected wildlife within the meaning of section 3(1) of the **Wildlife Act 1975** to be fishing bait for the purposes of this Act and whether it is fishing bait when it is alive or dead.

7 Definition of *fishery*

S. 7(1) substituted by No. 5/1997 s. 5(1).

(1) For the purposes of this Act, a fishery means a fishery as defined in this Act or in any Order in Council, regulation, fishery management plan, Ministerial direction or intergovernmental agreement or arrangement.

(2) Without limiting the matters by reference to which a fishery may be defined, a fishery may be defined by reference to any one or more of the following —

S. 7(2)(a) substituted by No. 5/1997 s. 5(2)(a).

(a) a species of fish or fishing bait, whether generally or by reference to a characteristic of such a species or by reference to a particular period of the life of such a species;

(b) an area of land or waters or land and waters;

(c) a method of fishing;

(d) a type of fishing equipment;

(e) a class of boats;

S. 7(2)(f) substituted by No. 5/1997 s. 5(2)(b).

(f) a class of licences or permits;

(g) a class of licence holders or permit holders or other persons;

(h) a type or class of activity;

(i) a type or class of fish habitat;

(j) a season.

S. 7A inserted by No. 5/1997 s. 6.

7A Meaning of *species*

(1) A reference to a species by name in this Act includes a reference to all subspecies, forms, races and hybrids of that species, unless a contrary intention appears.

(2) If a species is referred to by the name of a taxon in this Act, a reference to that species includes a reference to all organisms within that taxon, unless a contrary intention appears.

(3) A reference to a subspecies by name in this Act includes a reference to all forms, races and hybrids of that subspecies, unless a contrary intention appears.

(4) A reference to ***species*** in this Act in any general context is to be read as including a reference to all

relevant taxa, subspecies and other groupings of that species.

(5) For the purposes of this Act, a species may be defined as being constituted by—

(a) any taxonomic group of organisms;

(b) any species, subspecies, hybrid or genetic grouping of organisms;

(c) any other grouping of organisms (for example, by physical or physiological characteristics, size, sex, age, geographical location, form (for example whether domesticated or not), colour, race, variety or by any combination of these factors).

S. 7B inserted by No. 108/2003 s. 4.

7B Expanded meaning of *possession* of fish or fishing equipment

Without limiting the meaning of ***possess***, for the purposes of this Act a person possesses a fish or an item of fishing equipment if the fish or item is on any land or premises occupied by him or her, or is under the person's control, unless the person can satisfy the relevant court to the contrary.

8 Definition of *Victorian waters* and *waters*

(1) This Act applies to Victorian waters and protected waters.

(2) In this Act, reference to Victorian waters or to waters generally is a reference—

(a) to all waters that are within the limits of the State;

(b) except in relation to a fishery that is to be managed in accordance with the law of the Commonwealth pursuant to an arrangement under Part 2 and except for purposes prescribed by paragraph (d), to any waters of the sea not within the limits of the State that

are on the landward side of waters adjacent to the State that, within the meaning of that Part, are within the Commonwealth proclaimed waters;

(c) in relation to a fishery that is to be managed in accordance with the law of the State pursuant to an arrangement under Part 2, to any waters to which the legislative powers of the State extend, with respect to that fishery, whether pursuant to section 5 of the Coastal Waters (State Powers) Act 1980 of the Parliament of the Commonwealth or otherwise;

(d) in relation to activities to which this Act applies being activities that are, within the meaning of the Commonwealth Act, carried on for private purposes otherwise than by the use of a foreign boat, to any waters to which the legislative powers of the State extend with respect to those activities.

(3) In this Act, a reference to ***waters*** includes a reference to the bed and sub-soil lying beneath those waters.

(4) Regulations or fisheries notices may define the limit of Victorian waters for the purposes of this Act and for defining such limits may specify the boundaries of any waterway, bay, estuary or lake or the mouth of any inland waters.

9 Act to bind the Crown

(1) This Act binds the Crown, not only in right of Victoria but also, so far as the legislative power of Parliament permits, the Crown in all its other capacities.

(2) Nothing in this Act makes the Crown in any of its capacities liable to be prosecuted for an offence.

10 Crown property

(1) The Crown in right of Victoria owns all wild fish and other fauna and flora found in Victorian waters.

(2) The property in any wild fish and other fauna and flora found in Victorian waters passes—

S. 10(2)(a) amended by No. 5/1997 s. 50(1)(c).

(a) to the holder of an access licence, a recreational fishery licence, an aquaculture licence or a relevant licence or permit when taken from Victorian waters in accordance with the licence or permit;

S. 10(2)(aa) inserted by No. 58/2005 s. 4.

(aa) to the holder of the abalone quota unit when taken from Victorian waters in accordance with an Abalone Fishery Access Licence by the holder of the Abalone Fishery Access Licence under an individual abalone quota unit;

(b) to any other person when—

(i) lawfully taken from Victorian waters; and

(ii) where no licence or permit is required under this Act for the purpose.

S. 11 substituted by No. 5/1997 s. 7.

11 Application of this Act

(1) This Act applies to any fish, fishing bait, protected aquatic biota or noxious aquatic species in Victoria, regardless of its origin.

(2) However, a person does not commit any offence under this Act by possessing or controlling any fish, fishing bait or protected aquatic biota that appears to be possessed or controlled, or to have been taken, contrary to this Act if he or she can

prove that the fish, fishing bait or protected aquatic biota—

(a) was not taken in Victoria; and

(b) was taken in accordance with the law of the place where the fish, fishing bait or protected aquatic biota was taken.

(3) Subsection (2) does not absolve a person from complying with this Act with respect to any fish, fishing bait or protected aquatic biota that subsection (2) permits him or her to possess.

(4) A person does not commit any offence under this Act by unintentionally taking or possessing a fish or fishing bait (other than a fish or fishing bait of a noxious aquatic species) or protected aquatic biota if—

(a) the fish, fishing bait or protected aquatic biota is not killed or put into any container; and

(b) all reasonable steps are immediately taken to return the fish, fishing bait or protected aquatic biota to its natural habitat with the least possible injury or damage.

S. 11AA inserted by No. 67/2016 s. 29.

11AA Traditional owner agreement for natural resources

(1) If a traditional owner group entity has an agreement under Part 6 of the **Traditional Owner Settlement Act 2010**, any provision of this Act that provides for an offence for carrying out an agreed activity (other than a provision specified in subsection (2)) does not apply to a member of the traditional owner group—

(a) who is bound by the agreement; and

(b) who is carrying out an agreed activity to which the offence applies in accordance with the agreement and on land to which the agreement applies.

(2) For the purpose of subsection (1) the following provisions are specified—

(a) section 53;

(b) section 68B;

(c) section 76;

(d) section 84;

(e) section 139.

S. 11AA(3) inserted by No. 38/2017 s. 61.

(3) For the purposes of this section—

(a) a reference in subsection (1) to this Act does not include a reference to the regulations; and

(b) to avoid doubt, subsection (1) does not prevent a provision of the regulations from providing for an offence for carrying out an agreed activity.

S. 11A inserted by No. 108/2003 s. 24, amended by No. 22/2004 s. 6 (ILA s. 39B(1)).

11A This Act applies to fisheries reserves on land

(1) This Act applies to—

(a) any fisheries reserve declared under section 88(1)(b) or 88(1)(c); and

(b) any land on which an aquaculture activity is being conducted.

S. 11A(2) inserted by No. 22/2004 s. 6.

(2) Subsection (1) does not limit the application of any provision of this Act.

S. 11B inserted by No. 35/2009 s. 52.

11B Extraterritorial operation of Act

(1) If—

(a) a person does, or omits to do, an act or thing outside, or partly outside, Victoria, which would contravene a provision of this Act; and

(b) there is a real and substantial link between doing, or omitting to do, the act or thing and Victoria—

that provision applies to the act or thing or the omission as if it had been done, or omitted to be done, wholly within Victoria.

(2) Without limiting the generality of subsection (1), there is a real and substantial link with Victoria for the purposes of that subsection if—

(a) the conduct relates to a thing or act done or omitted to be done by the person when carrying out fishing activities under a fishery licence held, or purported to be held, by that person; or

(b) the conduct relates to the taking of fish from Victorian waters by the person.

(3) In this section a reference to a contravention of a provision of this Act is to be read as including a reference to the commission of an associated offence.

S. 11C inserted by No. 74/2010 s. 24.

11C Licence, approval and quota not personal property

For the purposes of section 8(1)(k) of the Personal Property Securities Act 2009 of the Commonwealth, a licence, approval of transfer or individual quota, granted or allocated under this Act, is declared not to be personal property.

Part 2—Commonwealth and State management of fisheries

Division 1—Commonwealth–State management

12 Powers and functions of Minister and deputy

(1) The Minister may exercise any power and perform any function conferred on the Minister by Part 5 of the Commonwealth Act, including any power or function of the Minister as a member of a Joint Authority.

(2) If in the exercise of the power conferred on the Minister by Part 5 of the Commonwealth Act, the Minister appoints a deputy, the deputy may exercise the powers and perform the functions conferred by that Act on the deputy of a member of a Joint Authority other than the Commonwealth Minister.

13 Power to enter into agreements

(1) The Minister may do any thing which in his or her opinion is necessary or convenient to ensure the co-operation of the government of the Commonwealth or the government of any other State in carrying out the purposes of this Act.

(2) Without limiting subsection (1), the Minister may enter into agreements with a Minister of the Crown in right of the Commonwealth or in right of any other State or with Ministers of the Crown in right of the Commonwealth and in right of any other States or with any authority constituted under a law of the Commonwealth or of any other State, including without limiting the generality of this subsection agreements for—

(a) fisheries adjustment schemes and funding of such schemes; and

(b) fisheries research schemes and funding of such schemes.

S. 13(3) amended by No. 68/2016 s. 51.

(3) Despite anything to the contrary in this Act, the Secretary or the Victorian Fisheries Authority—

S. 13(3)(a) amended by No. 68/2016 s. 51.

(a) must perform any duties or functions required to be performed by the Secretary or the Victorian Fisheries Authority; and

S. 13(3)(b) amended by No. 68/2016 s. 51.

(b) may exercise any powers and perform any functions conferred on or delegated to the Secretary or the Victorian Fisheries Authority—

by or under this section or an agreement made under this section.

14 Judicial notice and publication of agreement

(1) All courts and persons acting judicially must take judicial notice of the signature of a person who is or has been a member of a Joint Authority or a deputy of a member of a Joint Authority and of the fact that the person is, or was at a particular time, such a member or deputy.

(2) Any agreement entered into by the Minister under this part is to be published in the Government Gazette within 14 days of the agreement being entered into.

15 Functions of Joint Authority

A Joint Authority has such functions in relation to a fishery in respect of which an arrangement is in force as are conferred on it by the law in accordance with which, pursuant to the arrangement, the fishery is to be managed.

16 Delegation

(1) A Joint Authority may, by instrument in writing, either generally or as otherwise provided by the instrument, delegate to a person any of its powers under this Part other than this power of delegation.

(2) If a power delegated under subsection (1) is exercised by the delegate the power is, for the purposes of this Act, deemed to have been exercised by the Joint Authority.

(3) A delegation under this section may be expressed to be a delegation to the person from time to time holding or performing the duties of a specified office including an office—

(a) in the service of; or

(b) in the service of an Authority of; or

(c) under the law of—

the Commonwealth, another State or a Territory of the Commonwealth.

(4) A delegate of a Joint Authority is, in the exercise of delegated powers, subject to the directions of the Joint Authority.

(5) A delegation of a power under this section—

(a) may be revoked by instrument in writing by the Joint Authority (whether or not constituted by the persons constituting the Joint Authority at the time the power was delegated);

(b) does not prevent the exercise of the power by the Joint Authority;

(c) continues in force notwithstanding any change in the membership of the Joint Authority.

(6) A certificate signed by a member of a Joint Authority stating any matter with respect to a delegation under this section by the Joint Authority is evidence of that matter.

(7) A document purporting to be a certificate referred to in subsection (6) is, in the absence of evidence to the contrary, deemed to be such a certificate and to have been duly given.

(8) Nothing in this Part prevents the delegation by a Joint Authority, in accordance with a law of the Commonwealth, of powers conferred on the Joint Authority by the law of the Commonwealth.

17 Procedure of Joint Authorities

(1) Sections 66, 67 and 68 of the Commonwealth Act apply to and in relation to the performance by a Joint Authority of its functions under this Act.

(2) A written record purporting to be a record of a decision of a Joint Authority and to be signed by the Commonwealth Minister, or his or her deputy, who took part in or made the decision is evidence that the decision as recorded was duly made.

(3) In proceedings in any court, an instrument or other document signed on behalf of a Joint Authority by a member of the Joint Authority is taken to have been duly executed by the Joint Authority and, unless the contrary is proved, is taken to be in accordance with a decision of the Joint Authority.

18 Report of Joint Authority to be tabled

The Minister must cause a copy of a report of a Joint Authority prepared under section 70 of the Commonwealth Act to be laid before each House of Parliament as soon as practicable after the Minister receives a copy of the report.

19 Arrangement for management of certain fisheries

(1) The State may, in accordance with section 74 of the Commonwealth Act, make an arrangement referred to in section 71 or 72 of that Act for the management of a particular fishery.

S. 19(1A) inserted by No. 34/2006 s. 4(1).

(1A) An arrangement may be varied as provided for in section 74A of the Commonwealth Act.

S. 19(2) amended by No. 34/2006 s. 4(2).

(2) An arrangement may be terminated as provided by section 75 of the Commonwealth Act.

(3) After an arrangement has been made but before the arrangement takes effect—

(a) licences, permits and other instruments may be granted, issued, renewed, made or executed; and

(b) regulations and fisheries notices may be made—

for the purpose of providing for the operation of this Act as affected by the arrangement in all respects as if the arrangement had taken effect but such a licence, permit, instrument, regulation or fisheries notice does not have effect before the arrangement takes effect.

S. 19(3A) inserted by No. 34/2006 s. 4(3).

(3A) After an arrangement has been varied in accordance with the Commonwealth Act but before the variation takes effect—

(a) licences, permits and other instruments may be granted, issued, renewed, made or executed; and

(b) regulations and fisheries notices may be made—

for the purpose of providing for the operation of this Act as affected by the variation of the arrangement in all respects as if the variation of the arrangement had taken effect.

S. 19(3B) inserted by No. 34/2006 s. 4(3).

(3B) A licence, permit, instrument, regulation or fisheries notice under subsection (3A) does not have effect before the variation of the arrangement takes effect.

S. 19(3C) inserted by No. 34/2006 s. 4(3).

(3C) On the variation of an arrangement—

(a) each licence, permit and other instrument granted, issued, renewed, made or executed under this Act, that is in force immediately before the commencement of the variation; and

(b) any fisheries notice made under this Act, that is in force immediately before the commencement of the variation—

ceases to have effect, to the extent that it is inconsistent with the arrangement as varied.

(4) On the termination of an arrangement, licences, permits and other instruments granted, issued, renewed, made or executed and regulations and fisheries notices made for the purpose of providing for the operation of this Act as affected by the arrangement cease to have effect.

(5) After notice of termination of an arrangement has been given pursuant to the Commonwealth Act but before the termination takes effect—

S. 19(5)(a) amended by No. 74/2000 s. 3(Sch. 1 item 49.1).

(a) licences, permits and other instruments may be granted, issued, renewed, made or executed; and

(b) regulations and fisheries notices may be made—

for the purpose of providing for the operation of this Act as affected by the termination of the arrangement in all respects as if the arrangement had been terminated.

(6) A licence, permit, instrument, regulation or fisheries notice under subsection (5) does not have effect before the termination of the arrangement takes effect.

20 Application of Act to fisheries in accordance with arrangements

S. 20(1) amended by No. 5/1997 s. 50(1)(d).

(1) If there is in force an arrangement that provides that a particular fishery is to be managed in accordance with the law of the State, the provisions of this Act apply to and in relation to the fishery.

(2) The provisions of this Act do not apply to or in relation to that fishery—

(a) in respect of foreign boats, operations on or from foreign boats, or persons on foreign boats, in Commonwealth proclaimed waters; or

(b) in relation to matters that occurred in or in relation to Commonwealth proclaimed waters before the arrangement took effect.

21 Functions of Joint Authority

(1) If in respect of a fishery there is in force an arrangement under which a Joint Authority has the management of the fishery and the fishery is to be managed in accordance with the law of the State, the Joint Authority has the functions of—

(a) keeping constantly under consideration the condition of the fishery;

(b) formulating policies and plans for the good management of the fishery;

(c) carrying out management measures in respect of the fishery;

(d) exercising the powers conferred on it by this Act;

(e) co-operating and consulting with other authorities (including other Joint Authorities) in matters of common concern.

(2) A Joint Authority has the following objectives in the performance of its functions under subsection (1)—

(a) ensuring, through proper conservation, preservation and fisheries management measures, that the living resources of the waters to which this Act applies are not endangered or over exploited; and

(b) achieving the optimum utilisation and equitable distribution of those resources.

22 Joint Authority to exercise certain powers instead of Minister

(1) Subject to this section, a licence or permit granted, issued, renewed or made under this Act does not authorise the doing of any act or thing in or in relation to a Joint Authority fishery.

S. 22(2) amended by No. 68/2016 s. 52.

(2) In respect of a Joint Authority fishery that is to be managed in accordance with the law of the State, the powers conferred before or after the commencement of this Part on the Minister, the Secretary or the Victorian Fisheries Authority (including powers with respect to the issue, renewal, cancellation and suspension of licences or permits) are exercisable by the Joint Authority to the exclusion of the Minister, the Secretary or the Victorian Fisheries Authority.

S. 22(3) amended by No. 5/1997 s. 50(1)(e).

(3) A licence or permit granted under this Act by a Joint Authority must contain such conditions that it does not apply in relation to a Joint Authority fishery or Joint Authority fisheries not managed by that Joint Authority.

S. 22(4) amended by No. 5/1997 s. 50(1)(f).

(4) A Joint Authority may vary a licence or permit under this Act (including such a licence or permit granted, issued or renewed by that Joint Authority or another Joint Authority) so as to extend the operation of the licence or permit to matters to which the powers of the Joint Authority under this Act are applicable.

S. 22(5) amended by No. 5/1997 s. 50(1)(g)(i).

(5) If such a variation is made—

S. 22(5)(a) amended by No. 5/1997 s. 50(1)(g)(ii).

(a) the variation ceases to have effect if the licence or permit ceases to have effect; and

S. 22(5)(b) amended by No. 5/1997 s. 50(1)(g)(ii).

(b) the Joint Authority may suspend or cancel the variation as if it were a licence or permit granted by the Joint Authority.

S. 22(6) substituted by No. 5/1997 s. 50(3).

(6) Subject to sections 25(1)(b) and (c), on a fishery becoming a Joint Authority fishery, any regulation, fisheries notice, Order in Council, notice, declaration, order, or Ministerial direction that applies to the fishery under this Act ceases to apply to the fishery.

S. 22(7) substituted by No. 5/1997 s. 50(3).

(7) This section does not empower a Joint Authority to grant or to take any other action in respect of a licence in respect of a foreign boat.

23 Provisions to apply to Joint Authority fishery

The provisions of this Act relating to offences and enforcement and legal proceedings—

(a) extend and apply in respect of anything done to or in relation to fish to which a Joint Authority fishery relates or otherwise in relation to the Joint Authority fishery;

(b) are to be read and construed—

S. 23(b)(i) amended by No. 5/1997 s. 50(1)(h).

(i) as if any reference in this Act to a licence or permit were a reference to a licence or permit granted or made by the relevant Joint Authority in relation to the person alleged to have committed the offence or the boat alleged to have been used in the commission of the offence;

(ii) as if any reference in this Act to fish were a reference to fish to which the Joint Authority fishery relates.

24 Statement in an arrangement to be sufficient evidence

For the purposes of this Act, a statement in an arrangement to the effect that specified waters—

(a) in the case of an arrangement to which the Commonwealth and the State are the only parties, are waters adjacent to the State; and

(b) in the case of any other arrangement, are waters adjacent to the States that are parties to the arrangement or are waters adjacent to a specified State or States—

is sufficient evidence of the facts stated.

25 Regulations and notices

(1) If a Joint Authority is to manage a fishery in accordance with the law of the State, the Governor in Council may, for the purpose of giving effect to a decision of the Joint Authority—

(a) make regulations for the management of the fishery;

(b) make a regulation applying to the fishery a regulation made otherwise than pursuant to this section;

(c) amend a regulation made otherwise than pursuant to this section so that it is expressed to apply to the fishery, whether or not it applies to any other fishery.

(2) The Minister may by a fisheries notice provide for any matter referred to in section 152 for the purpose of giving effect to a decision of the Joint Authority.

(3) The power conferred on the Governor in Council to make regulations otherwise than under subsection (1) does not extend to the making of a regulation of a kind referred to in subsection (1)(a) or (1)(b) or the amendment of a regulation in the manner referred to in subsection (1)(c).

(4) If a regulation or fisheries notice affecting a fishery that is to be managed by a Joint Authority is expressed to be made pursuant to this section, it is conclusively presumed that it was made for the purpose of giving effect to a decision of the Joint Authority.

Division 2—State–State management

26 Power to enter into agreements

(1) The Minister may do any thing which in his or her opinion is necessary or convenient to ensure the co-operation of the government of any other State in carrying out the purposes of this Act.

(2) Without limiting subsection (1), the Minister may enter into agreements with a Minister of the Crown in right of any other State or other States or with any authority constituted under a law of any other State, including without limiting the generality of this subsection agreements for—

(a) fisheries adjustment schemes and funding of such schemes; and

(b) fisheries research schemes and funding of such schemes.

S. 26(3) amended by No. 68/2016 s. 53.

(3) Despite anything to the contrary in this Act, the Secretary or the Victorian Fisheries Authority—

S. 26(3)(a) amended by No. 68/2016 s. 53.

(a) must perform any duties or functions required to be performed by the Secretary or the Victorian Fisheries Authority; and

S. 26(3)(b) amended by No. 68/2016 s. 53.

(b) may exercise any powers and perform any functions conferred on or delegated to the Secretary or the Victorian Fisheries Authority—

by or under this section or an agreement made under this section.

27 Powers and functions

(1) For the purposes of this Division, the Minister may exercise any power and perform any function conferred on the Minister under Division 1 of this Part as if the Commonwealth Act applied under this Division.

(2) Sections 14 to 25 of this Act apply in respect of arrangements under this Division with such modifications as are necessary.

Part 3—Management plans

28 Management plans

(1) The Minister may declare a management plan by notice published in the Government Gazette.

(2) The Minister may prepare and issue guidelines for or with respect to the preparation of management plans by notice published in the Government Gazette.

(3) A management plan must be prepared in respect of each fishery for which the Minister declares by notice published in the Government Gazette that a fishery management plan is to be prepared.

(4) A management plan may be prepared for any noxious aquatic species declared under section 75.

(5) A management plan must be prepared in respect of a fisheries reserve as soon as possible after the fisheries reserve is declared under section 88.

(6) A management plan must—

(a) be consistent with the objectives of this Act;

S. 28(6)(aa) inserted by No. 108/2003 s. 25.

(aa) be consistent with any guidelines issued under subsection (2);

(b) include the management objectives of the plan;

(c) specify the management tools and other measures to be used to achieve the management objectives;

(d) include guidelines for the criteria to be used in respect of the issue of licences and permits and in respect of the renewal, variation or transfer of licences;

(e) as far as is known, identify critical components of the ecosystem relevant to the plan and current or potential threats to those components and existing or proposed preventative measures;

(f) specify performance indicators, targets and monitoring methods;

(g) as far as relevant and practicable, identify in respect of the fishery, declared noxious aquatic species or fisheries reserve, the biological, ecological, social and economic factors relevant to its management including —

(i) its current status, human uses and economic value;

(ii) measures to minimise its impact on non-target species and the environment;

(iii) research needs and priorities;

(iv) the resources required to implement the plan.

(7) A management plan may—

(a) specify the manner in which fishing capacity is to be measured and the fishing capacity so measured;

(b) specify the duration of the management plan;

(c) specify the procedures or conditions for review of the plan;

S. 28(7)(ca) inserted by No. 35/2009 s. 53.

(ca) specify that licences of a class of access licence may be issued for a period of up to 5 years;

S. 28(7)(cb) inserted by No. 40/2019 s. 12.

(cb) specify a fish harvest strategy, including actions to be taken if fish stocks fall below specified levels;

(d) include any other relevant matters.

S. 28(8) inserted by No. 5/1997 s. 8.

(8) Guidelines included in a management plan under subsection (6)(d) may include criteria designed to reduce the number of licences or permits that are held in respect of a fishery.

29 Contents of fishery management plan

(1) The purpose of a fishery management plan is to specify policies and strategies for the management of the fishery to which the plan applies on an ecologically sustainable basis having regard to relevant commercial, recreational, traditional and non-consumptive uses.

(2) A fishery management plan must—

(a) comply with section 28(6);

(b) define the fishery to which it relates;

(c) specify the objectives, state, status or use of the fishery.

(3) A fishery management plan may include the matters specified in section 28(7).

30 Contents of fisheries reserve management plan

(1) A fisheries reserve management plan must—

(a) comply with section 28(6);

(b) be consistent with the Order in Council declaring the fisheries reserve.

(2) A fisheries reserve management plan may in addition to the matters specified in section 28(7) —

(a) specify guidelines regulating or restricting activities in the fisheries reserve;

(b) specify standard terms and conditions subject to which permits may be issued in respect of activities in the fisheries reserve.

31 Contents of declared noxious aquatic species management plan

A declared noxious aquatic species management plan must—

(a) comply with section 28(6);

(b) include a description of the species and its distinguishing characteristics and habitat requirements;

(c) identify the effects or likely effects of the species on Victorian fisheries.

S. 32 (Heading) inserted by No. 35/2009 s. 29(1).

32 Submissions on management plan

S. 32(1) amended by No. 29/2011 s. 3(Sch. 1 item 39.1).

(1) Before the Minister declares a management plan, the Minister must—

S. 32(1)(a) repealed by No. 35/2009 s. 29(2).

* * * * *

(b) publish a notice of intention to declare a management plan in a newspaper circulating generally in Victoria at least 60 days before the declaration is made.

(2) The notice of intention must specify—

(a) the reasons for the proposed declaration;

(b) the fishery, fisheries reserve or declared noxious aquatic species in respect of which the declaration is proposed;

(c) where a copy of the draft management plan may be examined and obtained;

(d) the procedures for making public comments and considering submissions.

S. 32(3) amended by No. 68/2016 s. 54.

(3) The Victorian Fisheries Authority must consider all submissions received under this section.

S. 32(4) amended by No. 68/2016 s. 54.

(4) The Victorian Fisheries Authority must submit a report on the submissions to the Minister.

(5) The Minister may appoint a person or persons as a review panel to review the submissions and the draft management plan and report to the Minister.

S. 32(6) repealed by No. 35/2009 s. 29(2).

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33 Amendment of management plan

(1) The Minister may amend a management plan by notice published in the Government Gazette.

S. 33(2) amended by No. 35/2009 s. 30.

(2) If the Minister is satisfied that the proposed amendment does not substantially alter the management plan, the Minister may make the amendment.

(3) If the Minister is satisfied that the proposed amendment does substantially alter the management plan, the Minister must before making the amendment comply with section 32 as if the proposed amendment were a proposed declaration.

34 Duty of public authorities

(1) A public authority must have regard to any relevant management plan when performing its functions and exercising its powers.

S. 34(2) amended by No. 68/2016 s. 55.

(2) If a public authority proposes to take any action that is inconsistent with a management plan, the public authority must consult the Victorian Fisheries Authority in writing at least 28 days before the action is to be taken.

(3) After complying with subsection (2), a public authority may take such action if there is no reasonable alternative means of performing its functions or exercising its powers.

35 Inconsistency

(1) A management plan must not be inconsistent with any regulation or fisheries notice.

(2) A management plan is inoperative to the extent that it does not comply with subsection (1).

S. 35(3) repealed by No. 5/1997 s. 17.

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Pt 4 (Heading and ss 36–68) substituted as Pt 4 (Heading and ss 36–68A) by No. 5/1997 s. 9.

Part 4—Regulation of fisheries

Division 1—Offences, licences, general permits and authorisations

S. 36 substituted by No. 5/1997 s. 9.

36 Offences relating to commercial fishing activities

(1) A person must not—

(a) take fish for sale; or

(b) take fishing bait for sale; or

(c) use commercial fishing equipment—

unless he or she is authorised to do so under this Act.

Penalty: If the offence involved a priority species: 200 penalty units or 12 months imprisonment or both.

In any other case: 100 penalty units or 6 months imprisonment or both.

(2) A person must not possess commercial fishing equipment unless he or she is authorised to do so under this Act.

Penalty: 40 penalty units.

(3) A person may do any of the things referred to in subsection (1) or (2) if he or she—

(a) is acting on behalf of the holder of an access licence who is authorised to do that thing; and

(b) is authorised by that access licence to do that thing; and

(c) is not prohibited by this Act from so acting.

S. 37 substituted by No. 5/1997 s. 9.

37 Offences relating to commercial abalone equipment

(1) A person must not—

(a) use commercial abalone equipment to take more than twice the catch limit for abalone; or

(b) possess commercial abalone equipment and more than twice the catch limit for abalone—

unless he or she is authorised to do so under this Act.

Penalty: 200 penalty units or 12 months imprisonment or both.

(2) A person may do any of the things referred to in subsection (1) if he or she—

(a) is acting on behalf of the holder of an access licence who is authorised to do that thing; and

(b) is authorised by that access licence to do that thing; and

(c) is not prohibited by this Act from so acting.

S. 38 substituted by No. 5/1997 s. 9.

38 Access licences

(1) The regulations may create classes of access licences and may specify that the holder of an access licence of a particular class may do one or more of the following—

(a) take specified fish for sale;

(b) take specified fishing bait for sale;

S. 38(1)(ba) inserted by No. 51/2007 s. 4, substituted by No. 35/2009 s. 54(1).

(ba) possess, process or sell fish of a specified priority species;

(c) use specified commercial fishing or commercial abalone equipment or to use commercial fishing or commercial abalone equipment generally;

(d) possess specified commercial fishing or commercial abalone equipment or to possess commercial fishing or commercial abalone equipment generally;

(e) do anything else relating to the taking of fish or fishing bait specified by the regulations;

(f) use a boat to do anything authorised under paragraph (a), (b), (c), (d) or (e);

(g) engage one or more people to do one or more of the things listed in this subsection.

S. 38(1A) inserted by No. 60/2005 s. 29.

(1A) An access licence does not authorise the carrying out of any activity specified in subsection (1) in any national park, wilderness park or State park (within the meaning of the **National Parks Act 1975**) or any reference area (within the meaning of the **Reference Areas Act 1978**).

S. 38(1B) inserted by No. 60/2005 s. 29.

(1B) Subsection (1A) does not apply to any access licence in force immediately before 7 March 2005, to the extent of any entitlements under that licence that were in force at that time.

S. 38(2) amended by No. 68/2016 s. 56(1).

(2) The Victorian Fisheries Authority may issue an access licence of a particular class to a person.

S. 38(3) amended by No. 68/2016 s. 56(2).

(3) An access licence continues in force for the period specified in the licence by the Victorian Fisheries Authority unless it is sooner cancelled or suspended under this Act.

S. 38(4) substituted by No. 35/2009 s. 54(2), amended by No. 68/2016 s. 56(1).

(4) The Victorian Fisheries Authority, for the purposes of subsection (3), may specify—

(a) a period of up to 5 years for an access licence of a specified class of access licence if—

(i) there is an Order in Council declaring that access licences of that specified class may be issued for a period of up to 5 years; or

(ii) a management plan specifies that access licences of that specified class may be issued for a period of up to 5 years; or

(b) in any other case, a period of up to one year.

S. 38(4A) inserted by No. 35/2009 s. 54(2).

(4A) For the purposes of subsection (4), the Governor in Council may, by Order in Council, declare that licences of a class of access licence may be issued for a period of up to 5 years.

S. 38(5) amended by Nos 108/2003 s. 50(a), 68/2016 s. 56(2).

(5) An access licence may not be cancelled by the Victorian Fisheries Authority except in accordance with section 58, 61(1)(c) or 148(9).

(6) An access licence is renewable in accordance with section 57.

(7) The following provisions apply to an access licence that is transferable if the holder dies—

(a) despite anything to the contrary in this Act, the benefit of the licence is deemed to be an asset of the estate of the deceased;

(b) the personal representative of the deceased is deemed to be the holder of the licence until it is transferred from the personal representative to an eligible person in accordance with this Act;

S. 38(7)(c) amended by No. 35/2019 s. 8(1).

(c) subject to paragraph (d), the licence must be transferred to an eligible person in accordance with section 56 within one year of the grant of probate or letters of administration or within 2 years of the date of the death of the deceased, whichever is the earlier;

S. 38(7)(d) amended by Nos 68/2016 s. 56(2), 35/2019 s. 8(1).

(d) the Victorian Fisheries Authority, on the recommendation of the Commercial Fisheries Licensing Panel, may grant an application by the personal representative for an extension of the period under paragraph (c) for a further period not exceeding one year.

(8) For the purposes of subsection (7) ***personal representative*** has the same meaning as it has in section 5 of the **Administration and Probate Act 1958**.

S. 39 substituted by No. 5/1997 s. 9.

39 Restrictions concerning access licences

(1) The holder of an access licence of a class specified by the regulations for the purposes of this subsection must not personally carry out any of the fishing activities authorised by the licence unless he or she is expressly permitted to do so by the licence.

Penalty: 200 penalty units or 12 months imprisonment or both.

(2) The holder of an access licence of a class specified by the regulations for the purposes of this subsection must not use the services of any other person to carry out any of the fishing activities authorised by the licence unless—

S. 39(2)(a) amended by No. 68/2016 s. 57.

(a) the other person is, in the opinion of the Victorian Fisheries Authority, a fit and proper person to carry out those activities; and

(b) the licence permits the holder to use the services of that person and states the name of the person on the licence.

Penalty:200 penalty units or 12 months imprisonment or both.

(3) The holder of an access licence of a class specified by the regulations for the purposes of this subsection must not use a boat to carry out any of the fishing activities authorised by the licence unless the licence permits the use of that boat and states the registration number of the boat.

Penalty:200 penalty units or 12 months imprisonment or both.

S. 40 (Heading) inserted by No. 69/2004 s. 3(1)(a).

S. 40 substituted by No. 5/1997 s. 9.

40 Offence to receive or sell any fish

(1) A person must not—

(a) receive for any purpose any fish of a priority species;

(b) receive for sale any other fish;

(c) sell any fish of a priority species—

S. 40(1)(c) amended by No. 69/2004 s. 3(1)(b).

unless he or she is authorised to do so under this Act.

Penalty:200 penalty units or 12 months imprisonment or both.

(2) A person may do any of the things referred to in subsection (1) if he or she—

S. 40(2)(a) amended by No. 35/2009 s. 55.

(a) is acting on behalf of the holder of a fish receiver licence who is authorised to do that thing; and

S. 40(2)(b) amended by No. 35/2009 s. 55.

(b) is authorised by that fish receiver licence to do that thing; and

(c) is not prohibited by this Act from so acting.

S. 41 (Heading) inserted by No. 35/2009 s. 56(1).

S. 41 substituted by No. 5/1997 s. 9.

41 Fish receiver licences

S. 41(1) amended by No. 35/2009 s. 56(2).

(1) The regulations may create classes of fish receiver licences and may specify that the holder of a fish receiver licence of a particular class may do one or more of the following—

(a) receive for any specified purpose any fish of a specified priority species;

(b) receive for sale any other specified fish;

S. 41(1)(c) amended by No. 69/2004 s. 3(2), substituted by No. 35/2009 s. 56(3).

(c) possess, process or sell any fish of a specified priority species.

S. 41(2) amended by Nos 35/2009 s. 56(2)(b), 68/2016 s. 58(1).

(2) The Victorian Fisheries Authority may issue a fish receiver licence of a particular class to a person.

S. 41(3) amended by Nos 35/2009 s. 56(2)(b), 68/2016 s. 58(2).

(3) A fish receiver licence continues in force for the period specified in the licence by the Victorian Fisheries Authority unless it is sooner cancelled or suspended under this Act.

S. 42 substituted by No. 5/1997 s. 9.

42 Offences relating to aquaculture and live fish etc.

(1) A person must not—

(a) use, form or create a habitat (whether natural, artificial or partly natural or artificial) for hatching, rearing, breeding,

displaying or growing fish or fishing bait for sale or other commercial purposes;

(b) hatch, rear, breed, display or grow fish or fishing bait for sale or other commercial purposes; or

S. 42(1)(ba) inserted by No. 51/2007 s. 5.

(ba) stock fish into protected waters; or

(c) use any commercial aquaculture equipment —

unless he or she is authorised to do so under this Act.

Penalty: If the offence involved a priority species: 200 penalty units or 12 months imprisonment or both.

In any other case: 100 penalty units or 6 months imprisonment or both.

(2) A person may do any of the things referred to in subsection (1) if he or she—

(a) is acting on behalf of the holder of an aquaculture licence who is authorised to do that thing; and

(b) is authorised by that aquaculture licence to do that thing; and

(c) is not prohibited by this Act from so acting.

S. 42(2A) inserted by No. 80/2000 s. 4.

(2A) A person may do any of the things referred to in subsection (1) for commercial purposes (other than for sale) if he or she—

(a) is acting on behalf of the holder of a general permit who is authorised to do that thing; and

(b) is authorised by that permit to do that thing; and

(c) is not prohibited by this Act from so acting.

(3) The regulations may exclude specified fish or fishing bait from all or any of the provisions of subsection (1).

(4) If specified fish or fishing bait are excluded from a provision of subsection (1), a person may do the thing that would otherwise be prohibited by that provision in respect of that fish or fishing bait.

S. 43 substituted by No. 5/1997 s. 9.

43 Aquaculture licences

(1) The regulations may create classes of aquaculture licences and may specify that the holder of an aquaculture licence of a particular class may do one or more of the following—

(a) use, form or create a habitat (whether natural, artificial or partly natural or artificial) in a specified area for hatching, rearing, breeding, displaying or growing specified fish or fishing bait for sale or other commercial purposes;

(b) hatch, rear, breed, display or grow specified fish or fishing bait for sale or other commercial purposes;

S. 43(1)(ba) inserted by No. 51/2007 s. 6(1)(a).

(ba) stock fish into protected waters;

S. 43(1)(c) amended by No. 51/2007 s. 6(1)(b).

(c) use specified commercial aquaculture equipment or use commercial aquaculture equipment generally;

S. 43(1)(d) inserted by No. 51/2007 s. 6(1)(c).

(d) possess specified commercial aquaculture equipment or possess commercial aquaculture equipment generally;

S. 43(1)(e) inserted by No. 51/2007 s. 6(1)(c).

(e) engage one or more people to do one or more of the things listed in this subsection.

S. 43(1AA) inserted by No. 60/2005 s. 30.

(1AA) An aquaculture licence does not authorise the carrying out of any activity specified in subsection (1) in any national park, wilderness park or State park (within the meaning of the **National Parks Act 1975**) or any reference area (within the meaning of the **Reference Areas Act 1978**).

S. 43(1AB) inserted by No. 60/2005 s. 30.

(1AB) Subsection (1AA) does not apply to any aquaculture licence in force immediately before 7 March 2005, to the extent of any entitlements under that licence that were in force at that time.

S. 43(1A) inserted by No. 108/2003 s. 26, amended by No. 51/2007 s. 6(2).

(1A) The Minister may, by order published in the Government Gazette, create classes of aquaculture licences to give effect to a management plan and may specify that the holder of an aquaculture licence of a particular class may do one or more of the things listed in subsections (1)(a) to (1)(e) in the reserve to which the management plan applies.

S. 43(1B) inserted by No. 108/2003 s. 26.

(1B) The Minister may only create a class of aquaculture licence under subsection (1A) if the draft management plan for the reserve states that the creation of that class of licence will be necessary to give effect to the plan.

S. 43(1C) inserted by No. 108/2003 s. 26.

(1C) A licence of a class of aquaculture licence created under subsection (1A) is subject to the same fees and levies as apply to a licence of a specified class of aquaculture licence created by the regulations.

S. 43(1D) inserted by No. 108/2003 s. 26.

(1D) In creating a class of aquaculture licence under subsection (1A), the Minister must, for the purposes of subsection (1C), specify a class of aquaculture licence created by the regulations.

S. 43(2) amended by No. 68/2016 s. 59(1).

(2) The Victorian Fisheries Authority may issue an aquaculture licence of a particular class to a person.

S. 43(3) amended by No. 68/2016 s. 59(2).

(3) An aquaculture licence continues in force for the period specified on the licence by the Victorian

Fisheries Authority unless it is sooner cancelled or suspended under this Act.

S. 43(4) amended by Nos 51/2007 s. 6(3), 35/2009 s. 57.

(4) If an aquaculture licence authorises the holder of the licence to hatch, rear, breed, display or grow specified fish or fishing bait for sale, the holder of the licence is also authorised to take, possess, store, process or sell that fish or fishing bait.

S. 44 substituted by No. 5/1997 s. 9, amended by No. 17/2002 s. 3(2) (ILA s. 39B(1)).

44 Offences relating to recreational fishing

S. 44(1) amended by No. 17/2002 s. 3(1), substituted by No. 51/2007 s. 7.

(1) A person must not—

(a) take or attempt to take fish from marine waters or inland waters; or

(b) use or possess recreational fishing equipment in, on or next to Victorian waters—

unless he or she is authorised to do so by a recreational fishery licence or is otherwise authorised under this Act.

Penalty: If the offence involves the use of a recreational hoop net: 10 penalty units.

In any other case: 5 penalty units.

S. 44(2) inserted by No. 17/2002 s. 3(2), substituted by No. 51/2007 s. 7.

(2) A person must comply with subsection (3) if the person claims to be the holder of a recreational fishery licence and the person—

(a) takes or attempts to take fish from marine waters or inland waters; or

(b) uses or possesses recreational fishing equipment in, on or next to Victorian waters.

Penalty: 5 penalty units.

S. 44(3) inserted by No. 17/2002 s. 3(2), amended by No. 37/2014 s. 10(Sch. item 65.2(a)).

(3) An authorised officer or police officer may require a person to whom subsection (2) applies—

(a) to produce the licence for inspection on demand immediately; or

S. 44(3)(b) amended by No. 37/2014 s. 10(Sch. item 65.2(a)).

(b) if the person does not have the licence in his or her possession, to produce the licence at a time within 7 days of the demand at a place stipulated by the authorised officer or police officer.

S. 44(4) inserted by No. 17/2002 s. 3(2), amended by No. 37/2014 s. 10(Sch. item 65.2(b)).

(4) If an authorised officer or a police officer directs a person to whom subsection (2) applies to produce a licence at a subsequent time and place, it is a sufficient compliance with the direction if the person sends by post to the authorised officer or police officer within 7 days after first returning to his or her place of residence after the demand is made—

(a) the licence and a stamped addressed envelope for the return of the licence; or

S. 44(4)(b) amended by Nos 69/2009 s. 54(Sch. Pt 2 item 22), 6/2018 s. 68(Sch. 2 item 56.1).

(b) a copy of the licence certified to be a true copy by an authorised certifier within the meaning of the **Oaths and Affirmations Act 2018**.

S. 44(5) inserted by No. 17/2002 s. 3(2), amended by Nos 37/2014 s. 10(Sch. item 65.2(c)), 6/2018 s. 68(Sch. 2 item 56.2).

(5) The statement on oath or by affirmation of an authorised officer or a police officer that the holder of a licence failed to produce on demand on a specified day the licence and, having been directed to produce the licence to the authorised officer or police officer within 7 days thereafter, failed to produce the licence or to send by post the licence or a certified copy of the licence, is evidence until the contrary is proven, that the

person was not the holder of a recreational fishery licence under the Act on that specified day.

S. 45 substituted by No. 5/1997 s. 9.

45 Recreational fishery licences

S. 45(1) amended by No. 17/2002 s. 3(3), substituted by No. 51/2007 s. 8.

(1) The regulations may create classes of recreational fishery licences and may specify that the holder of a recreational fishery licence of a particular class may do one or more of the following for any purpose other than for the taking of fish for sale—

(a) take or attempt to take specified fish from marine waters or inland waters;

(b) use or possess recreational fishing equipment in, on or next to Victorian waters.

S. 45(2) amended by No. 68/2016 s. 60(1).

(2) The Victorian Fisheries Authority, or a person authorised by the Victorian Fisheries Authority, may issue a recreational fishery licence of a particular class to a person.

S. 45(3) amended by No. 68/2016 s. 60(2).

(3) A recreational fishery licence continues in force for the period specified on the licence by the Victorian Fisheries Authority.

S. 46 substituted by No. 5/1997 s. 9.

46 Group recreational fishery licence

S. 46(1) amended by No. 68/2016 s. 61.

(1) The Victorian Fisheries Authority may issue a group recreational fishery licence to a representative of a group.

S. 46(2) amended by No. 68/2016 s. 61.

(2) The Victorian Fisheries Authority may authorise the members of the group in respect of which the licence is issued—

(a) to take or attempt to take fish from inland waters;

(b) to take or attempt to take rock lobster from marine waters;

(c) to take or attempt to take fish other than rock lobster from marine waters—

for any purpose other than for the taking of fish for sale.

S. 46(3) amended by No. 68/2016 s. 61.

(3) The Victorian Fisheries Authority may issue a group recreational fishery licence on a one-off basis or on any other basis that he or she thinks appropriate.

(4) The representative of the group may be identified in the licence by name or by reference to the representative's office or position.

S. 46(5) amended by No. 68/2016 s. 61.

(5) The Victorian Fisheries Authority may cancel a group recreational fishery licence at any time and without notice.

S. 47 substituted by No. 5/1997 s. 9.

47 Recreational fishing that does not require a licence

(1) Subject to this Act, a person under the age of 18 years may take fish for any purpose other than for sale without holding a recreational fishery licence.

S. 47(2) repealed by No. 17/2002 s. 3(4).

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S. 48 substituted by No. 5/1997 s. 9, repealed by No. 17/2002 s. 4.

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S. 49 substituted by No. 5/1997 s. 9.

49 General permit

S. 49(1) amended by No. 68/2016 s. 62(1).

(1) The Victorian Fisheries Authority may issue a general permit to a person.

S. 49(2) amended by No. 68/2016 s. 62(1).

(2) The Victorian Fisheries Authority may authorise the holder of the permit to do one or more of the following—

S. 49(2)(a) amended by No. 51/2007 s. 9(1)(a).

(a) to take or possess fish for research, education, fish management, aquaculture, compliance or scientific purposes; or

S. 49(2)(b) amended by No. 51/2007 s. 9(1)(a).

(b) to take or possess fish from a developing fishery; or

(c) to carry out any research, exploitation, work or operation for the purpose of developing any fishery or aquaculture; or

(d) to investigate any species of fish or any fishery or any device; or

(e) to sell or dispose of any fish obtained by the person under the permit; or

S. 49(2)(f) amended by No. 80/2000 s. 5, substituted by No. 51/2007 s. 9(2).

(f) to use or possess specified commercial abalone equipment, commercial fishing equipment, commercial aquaculture equipment or recreational fishing equipment; or

S. 49(2)(g) inserted by No. 80/2000 s. 5, amended by No. 51/2007 s. 9(1)(b)(i).

(g) for commercial purposes—

(i) to use, form or create a habitat (whether natural, artificial or partly natural or artificial) for hatching, rearing, breeding, displaying or growing fish or fishing bait;

S. 49(2)(g)(ii) amended by No. 17/2002 s. 5(1), substituted by No. 51/2007 s. 9(1)(b)(ii).

(ii) to hatch, rear, breed, display, grow or sell fish or fishing bait; or

S. 49(2)(h) inserted by No. 17/2002 s. 5(2). amended by No. 51/2007 s. 9(1)(c).

(h) to take or possess fish (in areas where recreational fishing is authorised under this Act) for a specified indigenous cultural ceremony or event; or

S. 49(2)(i) inserted by No. 51/2007 s. 9(1)(d).

(i) to sell any fish of a specified priority species; or

S. 49(2)(j) inserted by No. 51/2007 s. 9(1)(d).

(j) to take or possess more fish than the catch limit for that species of fish; or

S. 49(2)(k) inserted by No. 51/2007 s. 9(1)(d), amended by No. 40/2019 s. 13(1).

(k) to take or possess fish that are less than the minimum size, or that are more than the maximum size, for that species of fish; or

S. 49(2)(l) inserted by No. 51/2007 s. 9(1)(d).

(l) to take fish of a specified species of fish during the closed season for that species of fish; or

S. 49(2)(m) inserted by No. 51/2007 s. 9(1)(d).

(m) to take, land, process, sell or possess fish of a specified species of fish that is prohibited from being taken, landed, processed, sold or possessed—

(i) absolutely or during a specified period; or

(ii) in any waters or specified waters; or

S. 49(2)(n) inserted by No. 51/2007 s. 9(1)(d).

(n) to carry out an activity in a fishery if the activity is not inconsistent with any regulations, management plan or Ministerial direction.

S. 49(2A) inserted by No. 60/2005 s. 31.

(2A) A general permit does not authorise the carrying out of any activity—

(a) specified in subsection (2)(b), (c), (d), (e), (f) and (g); and

(b) specified in subsection (2)(a), to the extent that it applies to aquaculture—

in any national park, wilderness park or State park (within the meaning of the **National Parks Act 1975**) or any reference area (within the meaning of the **Reference Areas Act 1978**).

S. 49(2B) inserted by No. 60/2005 s. 31.

(2B) Subsection (2A) does not apply to any general permit in force immediately before 7 March 2005, to the extent of any entitlements under that permit that were in force at that time.

S. 49(3) amended by No. 68/2016 s. 62(2).

(3) A general permit continues in force for the period specified on the permit by the Victorian Fisheries Authority, unless it is sooner cancelled under this Act.

S. 49(4) amended by No. 68/2016 s. 62(3).

(4) The Victorian Fisheries Authority may specify a period of up to 3 years for the purposes of subsection (3).

S. 49(5) amended by No. 68/2016 s. 62(3)(4).

(5) The Victorian Fisheries Authority must not issue a general permit to a person unless the Victorian Fisheries Authority is satisfied that the person is a fit and proper person to hold the permit.

S. 49(6) amended by No. 68/2016 s. 62(4).

(6) A general permit is not renewable, but the Victorian Fisheries Authority may issue another general permit to a person whose general permit is about to expire or who has previously held a general permit.

(7) A general permit is not transferable.

S. 49(8) amended by No. 68/2016 s. 62(5).

(8) The Victorian Fisheries Authority may cancel a general permit at any time and without notice.

S. 49(9) inserted by No. 40/2019 s. 13(2).

(9) If the Victorian Fisheries Authority has cancelled a general permit under subsection (8) on the ground that the holder of the general permit has ceased to be a fit and proper person to hold the general permit, the Victorian Fisheries Authority

may specify a time not exceeding 7 years within which the same person may not apply for the issue or transfer of a fishery licence, or the issue of a permit, under this Act.

S. 50 substituted by No. 5/1997 s. 9.

50 Special provisions concerning general permits for developing fisheries

S. 50(1) amended by No. 68/2016 s. 63.

(1) The Victorian Fisheries Authority must not issue a general permit in respect of a developing fishery unless a Ministerial direction exists in respect of the fishery.

(2) If the status of a fishery as a developing fishery is revoked, any general permits issued in respect of that fishery are automatically cancelled.

S. 50A inserted by No. 5/1997 s. 9.

50A Licence does not confer automatic rights on water authority property

(1) A licence or permit under this Division does not confer any authority or consent to enter on any land that is, or to take or to attempt to take fish from any waters that are, owned or vested in a water authority.

S. 50A(2) substituted by No. 17/2012 s. 86.

(2) In this section, ***water authority*** means an Authority within the meaning of the **Water Act 1989** with a function under Part 8 or 11 of that Act.

S. 50B inserted by No. 5/1997 s. 9.

50B Fishery licences not transferable unless regulations allow

A fishery licence of a particular category or class is not transferable unless the regulations permit the transfer of licences of that category or class.

Division 2—Issue, variation, conditions etc. of licences and permits

51 Issue of fishery licences

S. 51 substituted by No. 5/1997 s. 9.

S. 51(1) amended by No. 68/2016 s. 64(1).

(1) Subject to this Act, the Victorian Fisheries Authority may issue a fishery licence on—

(a) the application of a person who satisfies the eligibility criteria, if any, for the issue of the licence; and

(b) the payment of any fees, royalties and levies payable in respect of the issue of the licence.

S. 51(2) amended by No. 68/2016 s. 64(1).

(2) An application for a fishery licence must be made in the form required by the Victorian Fisheries Authority.

S. 51(3) amended by No. 68/2016 s. 64(1).

(3) In considering whether to issue a fishery licence to a person, the Victorian Fisheries Authority must also have regard to any relevant recommendations of the Commercial Fisheries Licensing Panel.

S. 51(3A) inserted by No. 108/2003 s. 29(2), amended by No. 68/2016 s. 64(1).

(3A) Despite anything to the contrary in any law, the Victorian Fisheries Authority may only issue an access licence or an aquaculture licence to an individual, a single corporation or a co-operative—the Secretary must refuse to issue such a licence to a partnership or a consortium.

S. 51(3B) inserted by No. 108/2003 s. 29(2), amended by No. 68/2016 s. 64(1).

(3B) Despite anything to the contrary in any law, the Victorian Fisheries Authority may only issue an access licence or an aquaculture licence to an individual who is an Australian resident.

S. 51(3C) inserted by No. 58/2005 s. 11, amended by Nos 35/2009 s. 58(1), 68/2016 s. 64(1).

(3C) Despite anything to the contrary in any law, the Victorian Fisheries Authority may only issue a fish receiver licence to an individual, a single corporation or a co-operative.

S. 51(3D) inserted by No. 58/2005 s. 11, amended by Nos 35/2009 s. 58(1), 68/2016 s. 64(2).

(3D) The Victorian Fisheries Authority must refuse to issue a fish receiver licence to a partnership or a consortium.

S. 51(4) amended by No. 68/2016 s. 64.

(4) The Victorian Fisheries Authority must refuse to issue a fishery licence if the Victorian Fisheries Authority considers that—

(a) the applicant does not satisfy the relevant eligibility criteria, if any; or

(b) the issue of the fishery licence would be inconsistent with any regulations, Order in Council, fisheries notice, management plan or Ministerial direction; or

S. 51(4)(c) substituted by No. 35/2009 s. 58(2).

(c) the applicant has not satisfied the Secretary that he or she is a fit and proper person to hold the fishery licence; or

(d) the issue of the fishery licence would be inconsistent with an intergovernmental agreement or arrangement; or

(e) any other ground prescribed for the purposes of this subsection applies.

S. 51(4A) inserted by No. 108/2003 s. 28.

(4A) In the case of a licence that the Minister has determined under section 51A is to be publicly sold—

S. 51(4A)(a) amended by No. 68/2016 s. 64(1).

(a) the Victorian Fisheries Authority may only issue the licence to the person who was the successful party under the sale process; and

S. 51(4A)(b) amended by No. 68/2016 s. 64(1).

(b) the Victorian Fisheries Authority may only issue the licence to that person if there are no grounds under subsection (4) to refuse to issue the licence.

S. 51(4B) inserted by No. 108/2003 s. 28.

(4B) For the purposes of subsection (4A), ***the successful party under the sale process*** is the first person who pays for the licence under the terms of the sale who is also eligible to be issued the licence under subsection (4A)(b).

S. 51(5) amended by No. 68/2016 s. 64(1).

(5) If there is no relevant management plan, the Victorian Fisheries Authority may refuse to issue a fishery licence if the Victorian Fisheries Authority considers that the issue of the fishery licence would be harmful to the welfare of a fishery.

S. 51(6) amended by No. 35/2019 s. 8(2).

(6) If a licence is issued for a period of less than one year, the licence fee payable for the licence is reduced pro rata (to the nearest month) to take account of the reduced period for which it is to be in force.

(7) Despite subsection (6), a licence fee equal to the pro rata amount payable for a month must be paid for a licence that is issued for less than a month.

(8) Subsections (6) and (7) also apply to any levy that is a fixed amount.

(9) Subsections (4), (5), (6), (7) and (8) do not apply to recreational fishery licences.

S. 51A inserted by No. 108/2003 s. 27.

51A Minister may determine that licences be publicly sold

S. 51A(1) amended by No. 68/2016 s. 65.

(1) This section applies if the Victorian Fisheries Authority proposes—

(a) to issue a new licence (other than a recreational fishery licence); or

(b) to re-issue a licence that has been surrendered or cancelled, or that has otherwise become available.

(2) The Minister may determine that the licence is to be publicly sold.

(3) In making a determination, the Minister must specify the method by which the sale is to take place.

(4) Without limiting subsection (3), a sale may occur by auction, tender or ballot.

S. 52 substituted by No. 5/1997 s. 9, amended by No. 108/2003 s. 31 (ILA s. 39B(1)).

52 Conditions of fishery licences and permits

(1) In addition to any conditions that are imposed by this Act, a fishery licence or a permit is subject to —

S. 52(1)(a) amended by No. 68/2016 s. 66.

(a) any conditions that the Victorian Fisheries Authority thinks appropriate and that are expressed or referred to in the licence or permit; and

(b) any conditions that are set out in the regulations.

S. 52(2) inserted by No. 108/2003 s. 31, amended by No. 68/2016 s. 66.

(2) In issuing documentary evidence of a licence (other than a recreational fishery licence) or a quota allocation entitlement, the Victorian Fisheries Authority must ensure, to the maximum extent that is practicable, that there is displayed

on, or attached to, the document the conditions that apply to the licence or entitlement (including those imposed directly by this Act and by the regulations).

S. 52(3) inserted by No. 108/2003 s. 31.

(3) A failure to comply with subsection (2) does not affect the validity of the licence or the entitlement nor does it absolve any person from the need to comply with any applicable condition of the licence or entitlement (even if that condition is not displayed on, or attached to, the document evidencing the licence or entitlement).

S. 53 substituted by No. 5/1997 s. 9.

53 Offence to fail to comply with licence or permit conditions

(1) The holder of a fishery licence or a permit must comply with any condition to which the licence or permit is subject.

Penalty:

(a) if the offence involves a priority species or the breach of a designated licence condition: 100 penalty units or 6 months imprisonment or both;

(b) if the offence is committed by the holder of a recreational fishery licence and paragraph (a) does not apply: 5 penalty units;

(c) in any other case: 50 penalty units.

S. 53(2) amended by No. 35/2009 s. 59(a).

(2) For the purposes of subsection (1), if a person who does any thing on behalf of the holder of a fishery licence or a permit does not comply with any condition to which the licence or permit is subject in doing that thing, the holder of the licence or permit is deemed to have failed to comply with that condition.

S. 53(3) amended by No. 35/2009 s. 59(b).

(3) Subsection (2) does not apply if the holder of the licence or permit can prove—

S. 53(3)(a) substituted by No. 108/2003 s. 14, amended by No. 35/2009 s. 59(b).

(a) that, at the time the offence was committed, there was in force a written agreement between him or her and the person under which the person agreed to comply with all relevant conditions to which the licence or permit was subject and all other relevant requirements of this Act and the regulations; and

S. 53(3)(b) substituted by No. 108/2003 s. 14.

(b) that he or she did everything else that was reasonably practicable to ensure that the person would comply with the condition; and

S. 53(3)(c) inserted by No. 108/2003 s. 14, substituted by No. 40/2019 s. 14.

(c) that the holder did not in any way assist, encourage or direct the person to fail to comply with the condition.

S. 53(4) amended by No. 35/2009 s. 59(c).

(4) A person who does any thing on behalf of the holder of a licence or a permit must comply with any condition to which the licence or permit is subject in doing that thing.

Penalty:

(a) if the offence involves a priority species or the breach of a designated licence condition: 100 penalty units or 6 months imprisonment or both;

(b) in any other case: 50 penalty units.

Note to s. 53(4) inserted by No. 108/2003 s. 19.

Note

If a person is convicted under subsection (4), section 128A enables the court to prohibit the person convicted from acting on behalf of certain classes of licence holders in certain cases.

S. 54 substituted by No. 5/1997 s. 9.

54 Changes to licence or permit conditions

S. 54(1) amended by Nos 17/2002 s. 6(1), 68/2016 s. 67(1).

(1) Subject to subsection (1B), the Victorian Fisheries Authority may at any time—

(a) vary a fishery licence or a permit; or

S. 54(1)(b) amended by No. 80/2000 s. 6(1).

(b) vary or revoke a condition imposed by her or him or impose a new condition on a fishery licence or a permit; or

S. 54(1)(c) inserted by No. 80/2000 s. 6(1).

(c) vary a class of fishery licence; or

S. 54(1)(d) inserted by No. 80/2000 s. 6(1), amended by No. 68/2016 s. 67(1).

(d) vary or revoke a condition imposed by the Victorian Fisheries Authority or impose a new condition on a class of fishery licence.

S. 54(1A) inserted by No. 80/2000 s. 6(2), amended by No. 68/2016 s. 67(2).

(1A) The Victorian Fisheries Authority may only exercise a power conferred by subsection (1)(c) or (d) to give effect to a management plan declared under section 28, or to any change to such a plan.

S. 54(1B) inserted by No. 17/2002 s. 6(2), amended by No. 68/2016 s. 67(2).

(1B) The Victorian Fisheries Authority must not vary —

(a) a fishery licence or a permit; or

(b) a condition on a fishery licence or permit; or

(c) a class of fishery licence; or

(d) a condition on a class of fishery licence—

if the variation would be inconsistent with any regulations, management plan or Ministerial direction.

S. 54(2) amended by No. 68/2016 s. 67(2).

(2) The Victorian Fisheries Authority may act under subsection (1)—

(a) on her or his own initiative; or

(b) on the written application of the person who holds the licence or permit.

S. 54(3) amended by Nos 80/2000 s. 6(3), 68/2016 s. 67(3).

(3) Before acting on the Victorian Fisheries Authority's own initiative in respect of subsection (1)(a) or (b), the Victorian Fisheries Authority must give the person who holds the licence or permit written notice of the action that the Victorian Fisheries Authority proposes to take and must allow the person to make written representations about the intended action within 14 days.

S. 54(3A) inserted by No. 80/2000 s. 6(4), repealed by No. 35/2009 s. 31(1).

* * * * *

S. 54(4) amended by Nos 80/2000 s. 6(5), 35/2009 s. 31(2), 68/2016 s. 67(4).

(4) Subsection (3) does not apply if the Victorian Fisheries Authority imposes, varies or revokes a condition for the purpose of removing any inconsistency between the licence or permit and any regulation, Order in Council, fisheries notice, management plan, order, Ministerial direction or intergovernmental agreement or arrangement.

S. 54(5) amended by No. 68/2016 s. 67(5).

(5) If the Victorian Fisheries Authority imposes, varies or revokes a condition of a licence or permit, the change has no effect until the Victorian Fisheries Authority notifies the holder of the licence or permit in writing of the change.

S. 54(6) amended by No. 68/2016 s. 67(6).

(6) The holder of a licence or permit must return the licence or permit to the Victorian Fisheries Authority within 10 days of being given notice that the Victorian Fisheries Authority has decided to change the licence or permit, unless he or she has a reasonable excuse for not doing so.

Penalty: 5 penalty units.

S. 55 substituted by No. 5/1997 s. 9.

55 Variations of licences and permits by regulation

If the regulations add, vary or delete a licence or permit condition with respect to a class of licence or permit, the addition, variation or deletion immediately applies to every licence or permit of that class in existence, unless the regulations state otherwise.

S. 56 (Heading) inserted by No. 35/2009 s. 60(1).

S. 56 substituted by No. 5/1997 s. 9.

56 Transfer of licences

(1) This section applies to a fishery licence that is transferable.

S. 56(2) amended by No. 68/2016 s. 68(1).

(2) The holder of the licence or a registered financial interest in the licence may, together with the proposed transferee, apply to the Victorian Fisheries Authority for the transfer of the licence to the transferee in accordance with the regulations.

S. 56(3) amended by Nos 35/2009 s. 60(2), 68/2016 s. 68(2)(a).

(3) The Victorian Fisheries Authority must grant an application for the transfer of the licence if—

S. 56(3)(a) amended by Nos 35/2009 s. 60(3)(a), 68/2016 s. 68(2)(b).

(a) the proposed transferee has satisfied the Victorian Fisheries Authority that he or she is a fit and proper person to hold the licence and satisfies any relevant eligibility criteria; and

S. 56(3)(b) amended by Nos 35/2009 s. 60(3)(b), 68/2016 s. 68(2)(b).

(b) the Victorian Fisheries Authority is satisfied that the licence is not subject to any action under sections 57 or 58; and

S. 56(3)(c) amended by Nos 35/2009 s. 60(3)(c), 68/2016 s. 68(2)(b).

(c) in the case of a licence to be transferred by the holder of the licence, the Victorian Fisheries Authority is satisfied that the

holders of any registered financial interests in the licence consent to the transfer of the licence; and

S. 56(3)(d) amended by Nos 35/2009 s. 60(3)(d), 68/2016 s. 68(2)(c).

(d) in the case of a licence to be transferred by the holder of a registered financial interest, the Victorian Fisheries Authority is satisfied that—

S. 56(3)(d)(i) amended by No. 68/2016 s. 68(2)(c).

(i) the holder of the licence was, within 7 days of the Victorian Fisheries Authority receiving the application, given notice by the Victorian Fisheries Authority of the application to transfer the licence; and

(ii) any other holders of a registered financial interest in the licence consent to the transfer.

S. 56(4) amended by No. 68/2016 s. 68(3).

(4) The Victorian Fisheries Authority must not grant an application for the transfer of the licence if the transfer would be inconsistent with the regulations, a Ministerial direction or a management plan.

S. 56(5) amended by No. 68/2016 s. 68(4).

(5) In considering whether to transfer the licence, the Victorian Fisheries Authority must also have regard to any relevant recommendations of the Commercial Fisheries Licensing Panel.

S. 56(6) amended by No. 68/2016 s. 68(5).

(6) The Victorian Fisheries Authority may grant the application for the transfer subject to any conditions the Victorian Fisheries Authority thinks appropriate and that are not inconsistent with the regulations, Ministerial direction or a management plan.

S. 56(7) amended by No. 68/2016 s. 68(6).

(7) If the Victorian Fisheries Authority considers that the holder of the licence is not complying with any requirement applying to the licence under this Act, the Victorian Fisheries Authority may by notice in writing served on the holder

defer the transfer of the licence until the holder satisfies the Victorian Fisheries Authority that the requirement has been complied with or that the holder is taking or has taken all reasonable steps to comply with the requirements of the licence.

S. 56(8) amended by No. 68/2016 s. 68(7).

(8) The Victorian Fisheries Authority may defer consideration of an application to transfer a licence if—

S. 56(8)(a) amended by No. 68/2009 s. 97(Sch. item 58.1).

(a) a charge-sheet charging an offence has been filed at a court, but has not been finally dealt with; and

(b) the charge, if found proven—

(i) may result in the suspension or cancellation of the licence; or

(ii) may result in the forfeiture of one or more individual quota units in respect of the licence; or

S. 56(8)(b)(iii) amended by No. 68/2016 s. 68(8).

(iii) would provide grounds for a finding by the Victorian Fisheries Authority that the person to whom the licence is to be transferred is not a fit and proper person to hold the licence or does not satisfy any relevant eligibility criteria.

(9) A copy of any notice served on the holder of a licence in accordance with subsection (3)(d)(i) or (7) must within 7 days of being served on the licence holder be sent to each holder of a registered financial interest in the licence.

S. 57 substituted by No. 5/1997 s. 9.

57 Certain licences may be renewed

S. 57(1) amended by Nos 35/2009 s. 61(3)(a), 68/2016 s. 69(1).

(1) The holder of an access licence, a fish receiver licence or any prescribed class of renewable

licence may apply to the Victorian Fisheries Authority for the renewal of the licence in accordance with the regulations.

S. 57(1A) inserted by No. 35/2009 s. 61(1), amended by No. 68/2016 s. 69(1).

(1A) If an application for renewal of a licence is lodged before the licence expires, the licence continues in operation until the Victorian Fisheries Authority renews the licence or refuses to renew the licence.

S. 57(2) amended by No. 68/2016 s. 69(1).

(2) In considering whether to renew the licence, the Victorian Fisheries Authority must have regard to any relevant recommendations of the Commercial Fisheries Licensing Panel.

S. 57(3) amended by No. 68/2016 s. 69(1).

(3) Subject to this section, the Victorian Fisheries Authority must renew the licence for a further period if the licence holder has a record of compliance with this Act.

S. 57(4) amended by Nos 35/2009 s. 61(2)(a), 68/2016 s. 69(2).

(4) If the Victorian Fisheries Authority considers that the holder of the licence has—

S. 57(4)(a) amended by No. 35/2009 s. 61(2)(b).

(a) ceased to satisfy any relevant eligibility criteria; or

S. 57(4)(b) substituted by No. 35/2009 s. 61(2)(c), amended by No. 68/2016 s. 69(2).

(b) failed to satisfy the Victorian Fisheries Authority that he or she continues to be a fit and proper person to hold the licence; or

S. 57(4)(c) amended by Nos 35/2009 s. 61(2)(d), 68/2016 s. 69(2).

(c) ceased to be actively, substantially and regularly engaged in the activities authorised by the licence—

the Victorian Fisheries Authority may by notice in writing served on the holder require the holder,

within 14 days or such later period as is specified in the notice, to show sufficient cause why the renewal of the licence should not be refused.

S. 57(5) amended by No. 68/2016 s. 69(3).

(5) If the holder of the licence fails to show sufficient cause for renewing the licence, the Victorian Fisheries Authority may refuse to renew the licence.

S. 57(6) amended by Nos 35/2009 s. 61(3)(a), 68/2016 s. 69(4).

(6) The Victorian Fisheries Authority may refuse to renew a fish receiver licence if, in the opinion of the Victorian Fisheries Authority, the premises or place in respect of which the licence is issued is not appropriate for the activities authorised by the licence.

S. 57(7) amended by No. 68/2016 s. 69(5).

(7) If the Victorian Fisheries Authority refuses to renew a licence in accordance with this section, the licence is for the purposes of this Act deemed to have been cancelled.

S. 57(8) amended by No. 68/2016 s. 69(6).

(8) If the Victorian Fisheries Authority considers that the holder of the licence is not complying with any requirement applying to the licence by or under this Act, the Victorian Fisheries Authority may by notice in writing served on the holder defer the renewal of the licence until the licence holder satisfies the Victorian Fisheries Authority that the requirement has been complied with or that the holder is taking or has taken all reasonable steps to comply with the requirements of the licence.

(9) A copy of any notice served on the holder of a licence in accordance with subsection (4) or (8) must, within 7 days of being served, be sent to each holder of a registered financial interest in the licence.

(10) If the renewal of a licence has been deferred under subsection (8), the licence is deemed as from the date of its expiry to have been suspended.

S. 57(11) amended by No. 68/2016 s. 69(7).

(11) The Victorian Fisheries Authority may defer the renewal of a licence while the licence is suspended by a court.

S. 57(12) inserted by No. 108/2003 s. 29(3) (as amended by No. 22/2004 s. 9(1)), amended by No. 68/2016 s. 69(8).

(12) Despite anything to the contrary in this section, the Victorian Fisheries Authority may not renew an access licence or an aquaculture licence unless the person who is to hold the renewed licence is an individual, a single corporation or a co-operative.

S. 57(13) inserted by No. 58/2005 s. 12, amended by Nos 35/2009 s. 61(3)(b), 68/2016 s. 69(8).

(13) Despite anything to the contrary in this section, the Victorian Fisheries Authority may not renew a fish receiver licence unless the person who is to hold the renewed licence is an individual, a single corporation or a co-operative.

S. 57(14) inserted by No. 35/2009 s. 61(4), amended by No. 68/2016 s. 69(9).

(14) The Victorian Fisheries Authority may refuse to renew a licence under this section because of the commission of an offence of a type referred to in section 128(1) by the holder of the licence despite a court deciding not to suspend or cancel the licence under that section on convicting or finding the holder guilty of that offence.

S. 57A inserted by No. 108/2003 s. 30 (as amended by No. 22/2004 s. 9(2)(a)-(d)).

57A Transitional provision concerning certain licences not held by one person

(1) If—

(a) on the date of commencement of section 30 of the **Fisheries (Further Amendment)**

Act 2003 an access licence or an aquaculture licence is not held by an individual, a single corporation or a co-operative; and

(b) by the date the licence is due to expire, an individual, a single corporation or a co-operative that holds the licence or that is a successor of a person who holds the licence, has not applied to the Secretary for the renewal of the licence in accordance with the regulations—

the licence is, by force of this section, suspended on the date the licence is due to expire.

(2) Despite anything in this Act to the contrary, a suspension under subsection (1) continues until either—

(a) an individual, a single corporation or a co-operative that held the licence or that is a successor of a person who held the licence, immediately before it was suspended, applies to the Secretary for the renewal of the licence in accordance with the regulations and the Secretary renews the licence; or

(b) the expiry of 12 months from the date the suspension began—

whichever occurs first.

(3) If the suspension of a licence ends under subsection (2)(b), the licence is cancelled.

S. 57B inserted by No. 108/2003 s. 30.

57B Restriction on the re-issue of cancelled licences

(1) This section applies if a licence is cancelled under this Act.

S. 57B(2) amended by No. 68/2016 s. 70(a).

(2) The Victorian Fisheries Authority must not re-issue the licence unless—

S. 57B(2)(a) amended by No. 68/2016 s. 70(b).

(a) within 12 months after the date the licence was cancelled, the Minister, acting on the advice of the Victorian Fisheries Authority, determines under section 51A that it is to be publicly sold; and

(b) the successful party under the resulting sale process applies for the re-issue of the licence.

S. 57C inserted by No. 58/2005 s. 13.

57C Transitional provision concerning certain licences not held by one person

(1) If—

(a) on the date of commencement of section 13 of the **Fisheries (Abalone) Act 2005** a Fish Receiver's Licence is not held by an individual, a single corporation or a co-operative; and

(b) by the date the licence is due to expire, an individual, a single corporation or a co-operative that holds the licence or that is a successor of a person who holds the licence, has not applied to the Secretary for the renewal of the licence in accordance with the regulations—

the licence is, by force of this section, suspended on the date the licence is due to expire.

(2) Despite anything in this Act to the contrary, a suspension under subsection (1) continues until either—

(a) an individual, a single corporation or a co-operative that held the licence or that is a successor of a person who held the licence, immediately before it was suspended, applies to the Secretary for the renewal of the licence in accordance with the regulations and the Secretary renews the licence; or

(b) the expiry of 12 months from the date the suspension began—

whichever occurs first.

(3) If the suspension of a licence ends under subsection (2)(b), the licence is cancelled.

S. 58 (Heading) inserted by No. 35/2009 s. 62(1), amended by No. 68/2016 s. 71(1).

58 Powers of Victorian Fisheries Authority to cancel or suspend licences

S. 58 substituted by No. 5/1997 s. 9.

S. 58(1) substituted by No. 35/2009 s. 62(2), amended by No. 68/2016 s. 71(2)(a).

(1) The Victorian Fisheries Authority may require the holder of a fishery licence to show sufficient cause why the licence should not be cancelled if—

S. 58(1)(a) amended by No. 68/2016 s. 71(2)(b).

(a) the Victorian Fisheries Authority considers that the holder of the licence—

(i) has ceased to be a fit and proper person to hold the licence; or

(ii) has ceased to satisfy any relevant eligibility criteria; or

(iii) has ceased to be actively, substantially and regularly engaged in the activities authorised by the licence; or

(b) the holder of the licence has not paid any fee, royalty or levy that is due in respect of the licence within 14 days of the date that it was due.

S. 58(2) substituted by No. 35/2009 s. 62(2), amended by No. 68/2016 s. 71(3)(a).

(2) The Victorian Fisheries Authority may require the holder of a fishery licence to show sufficient cause why the licence should not be suspended if —

S. 58(2)(a) amended by No. 68/2016 s. 71(3)(b).

(a) the Victorian Fisheries Authority considers that the holder of the licence has ceased to satisfy any relevant eligibility criteria; or

(b) the holder of the licence has not paid any fee, royalty or levy that is due in respect of the licence within 14 days of the date that it was due; or

(c) any other ground prescribed for the purposes of this subsection applies.

S. 58(3) amended by Nos 35/2009 s. 62(3), 68/2016 s. 71(4).

(3) The Victorian Fisheries Authority must make the requirement to show sufficient cause under subsection (1) or (2) by serving a written notice on the holder of the licence that specifies—

(a) the grounds on which the requirement is being made; and

(b) the time within which the requirement must be complied with.

S. 58(4) amended by No. 35/2009 s. 62(4).

(4) A copy of any notice served on the holder of a licence in accordance with subsection (3) must, within 7 days of being served, be sent to each

holder of a registered financial interest in the licence.

S. 58(5) substituted by No. 35/2009 s. 62(5), amended by No. 68/2016 s. 71(5).

(5) If the holder of a licence fails to show sufficient cause as required under subsection (1) within the required time, the Victorian Fisheries Authority may cancel the licence.

S. 58(5A) inserted by No. 40/2019 s. 15.

(5A) If the Victorian Fisheries Authority has cancelled a fishery licence under subsection (5) on the ground that the holder of the fishery licence has ceased to be a fit and proper person to hold the fishery licence, the Victorian Fisheries Authority may specify a time not exceeding 7 years within which the same person may not apply for the issue or transfer of a fishery licence, or the issue of a permit, under this Act.

S. 58(6) inserted by No. 35/2009 s. 62(5), amended by No. 68/2016 s. 71(6).

(6) If the holder of a licence fails to show sufficient cause as required under subsection (2) within the required time, the Victorian Fisheries Authority may suspend the licence for the period that the Victorian Fisheries Authority determines.

S. 58(7) inserted by No. 35/2009 s. 62(5), amended by No. 68/2016 s. 71(7).

(7) The Victorian Fisheries Authority may cancel or suspend a licence under this section because of the commission of an offence of a type referred to in section 128(1) by the holder of the licence despite a court deciding not to suspend or cancel the licence under section 128 on convicting or finding the holder guilty of that offence.

S. 58(8) inserted by No. 35/2009 s. 62(5).

(8) Subsection (1)(a)(i) does not apply to the holder of a recreational fishery licence.

S. 58A (Heading) amended by No. 68/2016 s. 72(1).

58A Licences or permits must be returned to Victorian Fisheries Authority

S. 58A inserted by No. 35/2009 s. 63.

S. 58A(1) amended by No. 68/2016 s. 72(2).

(1) The holder of a licence or permit that has been cancelled or suspended under this Act must return the licence or permit to the Victorian Fisheries Authority within 14 days after the cancellation or suspension comes into effect.

Penalty: 10 penalty units.

S. 58A(2) amended by Nos 64/2015 s. 3, 35/2019 s. 4.

(2) Subsection (1) does not apply to licences cancelled or suspended under section 57(7) or 57(10) or cancelled under Division 5 or 6 of Part 8.

S. 58A(3) amended by No. 68/2016 s. 72(3).

(3) The Victorian Fisheries Authority must, as soon as is practicable after receiving a licence or permit returned under subsection (1), issue the holder of the licence or permit with a notice stating the following things—

(a) the category and class of licence or permit and the name of the holder or former holder of the licence or permit;

(b) the status of the licence or permit;

(c) any rights of the holder of the licence under section 60.

S. 59 substituted by No. 5/1997 s. 9.

59 Registration of financial interests

(1) This section applies if a person who is not the holder of a particular access licence has a financial interest in that licence.

S. 59(2) amended by No. 68/2016 s. 73(1).

(2) The person, and the holder of the licence, may register details of the financial interest with the Victorian Fisheries Authority in the form approved by the Victorian Fisheries Authority.

S. 59(3) substituted by No. 80/2000 s. 7(1), amended by No. 68/2016 s. 73(2).

(3) The Victorian Fisheries Authority must notify each holder of a registered financial interest of an application—

(a) to transfer the licence; or

(b) to transfer individual quota units from the licence permanently—

within 21 days after receiving the application.

S. 59(4) amended by No. 68/2016 s. 73(3).

(4) Each holder of a registered financial interest who receives the notice must, within 21 days of receiving the notice, advise the Victorian Fisheries Authority in writing of his or her approval or disapproval of the proposed transfer.

S. 59(5) amended by Nos 80/2000 s. 7(2), 68/2016 s. 73(3).

(5) If all the holders of registered financial interests in the licence notified under subsection (3) do not approve the proposed transfer, the Victorian Fisheries Authority must not transfer the licence or permanently transfer individual quota units, as the case may be.

(6) If the holder of a registered financial interest notified under subsection (3) does not comply with subsection (4), the holder is deemed to have approved of the proposed transfer.

S. 59A inserted by No. 58/2005 s. 5.

59A Registration of financial interests

(1) This section applies if a person who is not the holder of a particular individual abalone quota unit has a financial interest in that individual abalone quota unit.

(2) If immediately before the commencement of section 5 of the **Fisheries (Abalone) Act 2005** a person is the holder of a registered financial interest in an Abalone Fishery Access Licence,

the person is deemed to have a registered financial interest under this section in—

(a) the individual blacklip abalone quota units; and

(b) any individual greenlip abalone quota unit—

initially allocated to the holder of that Abalone Fishery Access Licence by the initial quota order.

S. 59A(3) amended by No. 68/2016 s. 74(1).

(3) The person to whom this section applies, and the holder of the individual blacklip abalone quota units or the holder of the individual greenlip abalone quota units, may register details of the financial interest with the Victorian Fisheries Authority in the form approved by the Victorian Fisheries Authority.

S. 59A(4) amended by No. 68/2016 s. 74(2).

(4) The Victorian Fisheries Authority must notify each holder of a registered financial interest of an application to transfer the individual blacklip abalone quota units or the individual greenlip abalone quota units within 21 days after receiving the application.

S. 59A(5) amended by No. 68/2016 s. 74(3).

(5) Each holder of a registered financial interest who receives the notice must, within 21 days of receiving the notice, advise the Victorian Fisheries Authority in writing of his or her approval or disapproval of the proposed transfer.

S. 59A(6) amended by No. 68/2016 s. 74(3).

(6) If all the holders of registered financial interests in the individual blacklip abalone quota units or the individual greenlip abalone quota units notified under subsection (4) do not approve the proposed transfer, the Victorian Fisheries Authority must not transfer the individual blacklip abalone quota units or the individual greenlip abalone quota units.

(7) If the holder of a registered financial interest notified under subsection (4) does not comply

with subsection (5), the holder is deemed to have approved of the proposed transfer.

S. 60 (Heading) inserted by No. 35/2009 s. 64(1).

60 Cancelled transferable licences may be transferred

S. 60 substituted by No. 5/1997 s. 9.

S. 60(1) substituted by No. 35/2009 s. 64(2), amended by Nos 68/2016 s. 75(1), 40/2019 s. 39(1).

(1) This section applies to a licence that is transferable and that has been cancelled by a court, the Victorian Fisheries Authority or the Secretary except—

(a) a licence cancelled under section 57(7); or

S. 60(1)(b) amended by Nos 64/2015 s. 4(a), 68/2016 s. 75(2).

(b) a licence cancelled by the Secretary or the Victorian Fisheries Authority in accordance with a direction under section 61; or

S. 60(1)(c) inserted by No. 64/2015 s. 4(b), amended by No. 35/2019 s. 5(1).

(c) a licence cancelled under Division 5 of Part 8; or

S. 60(1)(d) inserted by No. 35/2019 s. 5(2).

(d) a licence surrendered or cancelled under Division 6 of Part 8.

S. 60(2) amended by No. 68/2016 s. 75(3).

(2) The Victorian Fisheries Authority must notify each holder of a registered financial interest in the licence of the cancellation.

(3) For the purposes of this section, the cancellation of the licence is stayed and the licence is deemed

to have been suspended until whichever of the following first occurs—

(a) an appeal against the cancellation of the licence is granted; or

(b) if there is no appeal against the cancellation of the licence or the appeal is dismissed—

(i) the holder of the licence or the registered financial interest transfers the licence to an eligible person in accordance with this Act; or

(ii) the expiry of the period of 6 months after the date on which an appeal should have been lodged or was dismissed (as the case may be).

(4) If subsection (3)(b) applies and the holder of the licence fails to transfer the licence in accordance with that subsection, the licence is cancelled as from the expiry of the period of 6 months specified in that subsection.

(5) If subsection (3)(b) applies but subsection (4) does not apply, the cancellation of the licence by the court is revoked on the transfer of the licence to the eligible person.

S. 60(6) inserted by No. 35/2009 s. 64(3).

(6) If during the period of suspension of a licence under subsection (3), the term of that licence expires, the term of the licence is extended until the end of that period.

S. 60A inserted by No. 80/2000 s. 8.

S. 60A (Heading) inserted by No. 108/2003 s. 32(1).

60A Removal notice on cessation of aquaculture activities

S. 60A(1) substituted by No. 108/2003 s. 32(2).

(1) This section applies if—

(a) a person's authorisation to conduct aquaculture activities under an aquaculture licence or a general permit ceases; and

(b) the licence or permit related to an area that is Crown land.

S. 60A(2) amended by Nos 108/2003 s. 32(3), 68/2016 s. 76(1).

(2) The Victorian Fisheries Authority may, by notice in writing served on the person, require the person within any reasonable time specified in the notice to remove any commercial aquaculture equipment, fish, fishing bait or aquatic flora specified in the notice from the area to which the licence or permit applied.

(3) A person who is served with a notice under subsection (2) must comply with the requirements of the notice.

Penalty: 100 penalty units or 6 months imprisonment or both.

S. 60A(4) amended by No. 68/2016 s. 76(2).

(4) If a person has failed to comply with the requirements of the notice, the Victorian Fisheries Authority may at any reasonable time having regard to all the circumstances—

(a) enter upon any land or protected waters or any other premises other than a dwelling house for the purpose of searching for, or seizing and removing, any commercial aquaculture equipment, fish, fishing bait or aquatic flora specified in the notice; and

(b) seize and remove any commercial aquaculture equipment, fish, fishing bait or aquatic flora specified in the notice.

S. 60A(5) amended by No. 68/2016 s. 76(2).

(5) Any commercial aquaculture equipment, fish, fishing bait or aquatic flora seized under subsection (3) may be disposed of as the Victorian Fisheries Authority directs.

S. 60A(6) amended by No. 68/2016 s. 76(3).

(6) All reasonable costs and expenses incurred by the Victorian Fisheries Authority as a result of the failure of the person to comply with the notice may be recovered from that person by the Victorian Fisheries Authority.

S. 60A(7) amended by No. 68/2016 s. 76(4).

(7) If the whole or part of an amount payable under subsection (6) has not been paid to the Victorian Fisheries Authority as required or the proceeds from the sale of the seized things do not meet the Victorian Fisheries Authority's costs and expenses, the Victorian Fisheries Authority may recover the amount unpaid as a debt in a court of competent jurisdiction.

S. 60A(8) amended by No. 68/2016 s. 76(5).

(8) After the payment of the Victorian Fisheries Authority's costs and expenses, any proceeds remaining from the sale of the seized things must be paid to the person whose property they were at the time they were seized.

Division 3—Ministerial directions and quota notices concerning fisheries

S. 61 substituted by No. 5/1997 s. 9.

61 Minister may issue directions

(1) The Minister may give a direction on any matter relating to the management of one or more fisheries or one or more zones of a fishery including (without limiting the scope of this power)—

(a) the eligibility criteria that must be met before a person may be issued with a particular category or class of fishery licence or permit,

or to have a particular category or class of fishery licence renewed or transferred;

(b) licence reduction arrangements;

S. 61(1)(c) amended by No. 68/2016 s. 77(1).

(c) requiring the Victorian Fisheries Authority to cancel licences.

(2) The Minister must publish any direction given under this section in the Government Gazette.

(3) The Minister may revoke or amend a direction at any time by publishing notice of the revocation or amendment in the Government Gazette.

S. 61(4) amended by No. 68/2016 s. 77(2).

(4) If a direction is to contain measures or conditions involving expenditure by the Crown other than expenditure within the relevant Department's or the Victorian Fisheries Authority's budget allocation, the Minister may only give the direction after obtaining the approval of the Treasurer.

S. 61(5) amended by No. 68/2016 s. 77(3).

(5) The Victorian Fisheries Authority must comply with any direction given under subsection (1)(c).

S. 61A inserted by No. 108/2003 s. 33.

61A Validation of direction published on 3 April 2003

(1) The direction given to the Secretary by the Minister under section 61(1)(c) and published in the Government Gazette on 3 April 2003 is deemed to have been validly given by the Minister.

(2) Every licence cancelled under that direction on or before 10 April 2003 is deemed to have been validly cancelled.

S. 62 substituted by No. 5/1997 s. 9, repealed by No. 35/2009 s. 32.

* * * * *

S. 63 (Heading) inserted by No. 68/2016 s. 78.

S. 63 substituted by No. 5/1997 s. 9.

63 Compensation arising from the cancellation of access licences under section 61

(1) This section applies if an access licence is cancelled as a result of a direction under section 61.

S. 63(2) substituted by No. 108/2003 s. 34(1).

(2) The person who held the licence is entitled to the following, as specified by, and determined in accordance with, the regulations—

(a) compensation for—

(i) the assessed market value of the licence; and

(ii) the assessed market value of the losses (if any) that would be incurred if the fishing boat and equipment used under the licence were to be sold; and

(b) compensation for the loss of up to 3 years of net income (based on past net income); and

(c) an amount by way of a solatium of up to 10% of the compensation assessed under paragraphs (a) and (b)—

less any amounts paid to the holders of registered financial interests in the licence under subsection (2A).

S. 63(2A) inserted by No. 108/2003 s. 34(1).

(2A) A person who held a registered financial interest in the licence at the time it was cancelled is entitled to an amount of compensation determined in accordance with the regulations.

S. 63(2B) inserted by No. 108/2003 s. 34(1).

(2B) The regulations may require the deduction from any amount payable under subsection (2) or (2A) of an amount to recognise the present value of any of the compensation that relates to the future.

(3) An application for compensation must be made to the Secretary in the form specified by the Secretary.

(4) The Secretary must determine the amount of compensation payable in accordance with the regulations.

(5) Compensation is to be paid in the manner permitted under the regulations.

S. 63(6) substituted by No. 108/2003 s. 34(2).

(6) Any dispute in relation to the payment of compensation under this section is to be determined in accordance with Part 11.

S. 63(7) inserted by No. 108/2003 s. 34(2).

(7) For the purposes of subsection (2)—

(a) the regulations may provide for the method by which a market value is to be assessed; and

(b) compensation may be paid up to the maximum amount permitted by subsection (2)(b) even if the licence was held by the person for less than the period in respect of which the compensation is being paid.

S. 64 substituted by Nos 5/1997 s. 9, 80/2000 s. 9.

64 Initial quota order

(1) The Minister may, by order published in the Government Gazette—

(a) declare that the whole, or a specified zone or zones, of a fishery is to be managed by the allocation of quotas;

(b) determine the method for setting the number of individual quota units for the quota fishery;

(c) determine the method for allocating individual quotas to each access licence issued in respect of the quota fishery;

(d) declare that individual quota units in the quota fishery may be transferred—

(i) permanently; or

(ii) for a quota period only;

(e) set the minimum and maximum number of individual quota units that may be acquired or held by each licence holder;

(f) determine the circumstances, if any, in which the individual quotas can be exceeded or carried over (other than by transfer).

(2) The Minister may revoke or amend an order at any time by order published in the Government Gazette.

(3) However, if the Minister makes a declaration under subsection (1)(d)(i), the Minister may only amend that declaration or anything under subsection (1)(a), (b) or (c) if the amendment is required—

(a) to give effect to the management plan for the quota fishery declared under section 28, or to any change to that plan; or

(b) to correct—

(i) a clerical mistake; or

(ii) an error arising from an accidental slip or omission; or

(iii) a miscalculation of figures.

(4) If the Minister makes a declaration under subsection (1)(d)(i), the holders of access licences may also transfer individual quota units for a quota period only.

S. 64A inserted by No. 80/2000 s. 9.

64A Further quota order

(1) The Minister may, by further order published in the Government Gazette—

(a) set the total allowable catch (by number, volume, weight or value) for a specified period for a quota fishery;

(b) determine the quantity of fish (by number, volume, weight or value) comprising an individual quota unit in a quota fishery in a specified period.

(2) The Minister may revoke or amend an order at any time by an order published in the Government Gazette.

(3) Without intending to limit the generality of subsection (2), the Minister may reduce the total allowable catch, or reduce the quantity of fish comprising an individual quota unit before the end of the period to which the total allowable catch or unit applies.

S. 64AB inserted by No. 17/2002 s. 7.

64AB Sub-zone orders

(1) The Minister may, by further order published in the Government Gazette—

(a) declare that a quota fishery includes a sub-zone; and

(b) set the portion of the total allowable catch for the quota fishery that applies in respect of a specified sub-zone; and

S. 64AB(1)(c) amended by No. 108/2003 s. 35(1)(a).

(c) determine the method for allocating that portion of the total allowable catch to the holders of access licences issued in respect of the quota fishery; and

S. 64AB(1)(d) inserted by No. 108/2003 s. 35(1)(b).

(d) declare that individual quota units in respect of a sub-zone may only be transferred to a licence holder holding a licence in respect of the same sub-zone;

(2) The Minister may revoke or amend an order under subsection (1) at any time by an order published in the Government Gazette.

S. 64AB(3) amended by No. 68/2016 s. 79.

(3) The Victorian Fisheries Authority must give the holder of an access licence in a quota fishery a sub-zone notice setting out details of the allocation of the portion of the total allowable catch in respect of the specified sub-zone that is applicable to the licence holder as soon as is practicable after a sub-zone order under this section is published.

S. 64B inserted by No. 80/2000 s. 9.

64B General quota order provisions

S. 64B(1) amended by No. 17/2002 s. 8(a)(b), repealed by No. 35/2009 s. 33(1).

* * * * *

(2) In referring to a quantity of individual quota units, an order under section 64 or 64A may refer to fractions of an individual quota unit.

S. 64B(3) amended by No. 35/2009 s. 33(2).

(3) An order under section 64, 64A or 64AB has effect from the date it is published in the Government Gazette, or from any later date specified in the order as the date it is to have effect from.

S. 64C inserted by No. 80/2000 s. 9, repealed by No. 80/2000 s. 22, new s. 64C inserted by No. 108/2003 s. 36, amended by No. 58/2005 s. 6.

64C No compensation payable for losses resulting from quota orders

No compensation is payable by the Crown to any person for any loss or damage that results from an order made by the Minister under section 64, 64A, 64AB, 66C, 66D or 66E.

S. 65 substituted by Nos 5/1997 s. 9, 80/2000 s. 9.

65 Quota notices

S. 65(1) amended by No. 68/2016 s. 80(1).

(1) The Victorian Fisheries Authority must give the holder of an access licence in a quota fishery a quota notice setting out details of the individual quota allocated to the licence as soon as is practicable after any individual quota is allocated to the licence.

S. 65(2) amended by No. 68/2016 s. 80(2).

(2) If a quota order makes any change to an individual quota in respect of a quota fishery for which individual quota units may only be temporarily transferred, the Victorian Fisheries Authority must give the holder of the access licence a new quota notice setting out details of the revised individual quota as soon as is practicable after the quota order is published.

S. 65(3) amended by No. 68/2016 s. 80(3).

(3) If the Victorian Fisheries Authority grants an application for a transfer under section 65A, the Victorian Fisheries Authority must issue new quota notices for each access licence involved in the transfer or acquisition.

S. 65(4) amended by No. 68/2016 s. 80(4).

(4) The Victorian Fisheries Authority must issue a new quota notice for an access licence as soon as is practicable after the access licence is renewed or transferred.

(5) If an individual quota no longer applies to a licence in a quota period, the quota notice required by subsection (3) or (4) must state that fact.

S. 65A inserted by No. 80/2000 s. 9.

65A Transfer of individual quota units

S. 65A(1) amended by No. 68/2016 s. 81(1).

(1) A transfer of individual quota units may only be made with the approval of the Victorian Fisheries Authority.

S. 65A(2) amended by Nos 68/2016 s. 81(1), 35/2019 s. 8(3).

(2) The holder of an access licence in a quota fishery may apply to the Victorian Fisheries Authority for approval to transfer a fraction of, or one or more, individual quota units to the holder of any other access licence for that fishery.

S. 65A(2A) inserted by No. 108/2003 s. 35(2).

(2A) If the Minister has made an order under section 64AB(1)(d), subsection (2) is to be read as if for "for that fishery" there were substituted "for the relevant sub-zone of that fishery".

S. 65A(3) amended by No. 68/2016 s. 81(1), substituted by No. 40/2019 s. 16.

(3) An application for the approval of a transfer must be made in the manner and form required by the Victorian Fisheries Authority.

S. 65A(4) amended by No. 68/2016 s. 81(2).

(4) The Victorian Fisheries Authority may grant an application if it is consistent with every quota order and management plan that applies to the quota fishery.

S. 65A(5) amended by No. 68/2016 s. 81(2).

(5) The Victorian Fisheries Authority must refuse to grant an application that is inconsistent with any relevant provision of this Act.

S. 65B inserted by No. 108/2003 s. 37.

65B Minister may determine that quota units be publicly sold

(1) This section applies if it is proposed—

(a) to create and allocate new quota units in addition to the quota units that were created and allocated under an initial quota order; or

(b) to allocate quota units that arise in excess of any threshold quota limit specified in a management plan; or

(c) to allocate any quota units that have been forfeited, or that have otherwise become available.

(2) The Minister may determine that the quota units are to be publicly sold.

(3) In making a determination, the Minister must specify the method by which the sale is to take place.

(4) Without limiting subsection (3), a sale may occur by auction, tender or ballot.

(5) Nothing in this section is intended to enable the sale of a quota unit to a person who is not the holder of a licence in the relevant fishery.

S. 66 substituted by No. 5/1997 s. 9.

66 Offences in relation to individual quota

S. 66(1) amended by No. 35/2019 s. 8(4).

(1) During any specified quota period, the holder of an access licence must not take any fish in excess of the permitted amount.

Penalty:

(a) For a first offence, 50 penalty units and the forfeiture of whichever is the greater of one individual quota unit or the number of individual quota units equivalent to the quantity of excess fish taken.

(b) For a second offence, 100 penalty units and the forfeiture of whichever is the greater of 3 individual quota units or the number of individual quota units equivalent to double the quantity of excess fish taken.

(c) For a third offence, 150 penalty units and the cancellation of any entitlement in respect of the access licence to be allocated an individual quota in the next full quota period after the conviction.

(d) For a subsequent offence, 200 penalty units or 12 months imprisonment or both, and the cancellation of the access licence.

S. 66(2) amended by No. 108/2003 s. 38(1).

(2) For the purposes of subsection (1), ***permitted amount*** means the amount of fish a person is permitted to take under an access licence by virtue of the number of individual quota units that he or she holds under this Act in respect of the licence together with any other amount of excess or carry over that the person is permitted to take under a relevant quota order.

(3) For the purposes of subsection (1)(c), a quota period is a full quota period even if it is shortened in any way by a quota order made during the quota period.

S. 66(4) amended by No. 68/2016 s. 82(1).

(4) Individual quota units that are forfeited under subsection (1) may be allocated by the Victorian Fisheries Authority to one or more holders of access licences in the same specified zone in accordance with the regulations.

S. 66(5) repealed by No. 108/2003 s. 38(2).

* * * * *

(6) If the number of individual quota units not yet taken by the holder in the quota period in which the conviction occurs is less than the number forfeited under paragraph (a) or (b) of the penalty under subsection (1), the balance of the forfeited

number of quota units is forfeited in the next quota period.

(7) For the purposes of subsection (6), any differences in the quantity of fish that comprise an individual quota unit in different periods are to be disregarded.

(8) For the purposes of paragraphs (a) and (b) of the penalty under subsection (1), if a quantity of fish does not equate exactly to a number of individual quota units, the excess is deemed to be an individual quota unit.

(9) If a person who is acting on behalf of the holder of an access licence exceeds the permitted amount for the licence—

(a) he or she is liable to the relevant fines or imprisonment specified in subsection (1); and

(b) the relevant forfeiture applies to the licence.

S. 66(10) amended by No. 68/2016 s. 82(2).

(10) The Victorian Fisheries Authority must issue a new quota notice for an access licence as soon as is practicable after any individual quota units in respect of the licence are forfeited under this section.

(11) If an individual quota no longer applies to a licence in a quota period, the quota notice required by subsection (10) must state that fact.

S. 66A inserted by No. 17/2002 s. 9.

66A Offences in relation to sub-zones

(1) During any specified quota period, the holder of an access licence must not take any fish in excess of the fish specified in the sub-zone notice given to the holder of the access licence.

Penalty:

(a) For a first offence, 50 penalty units.

(b) For a subsequent offence, 100 penalty units or 6 months imprisonment or both, and the forfeiture of the number of individual quota units equivalent to the quantity of excess fish taken.

(2) If a person who is acting on behalf of the holder of an access licence takes any fish in excess of the fish specified in the sub-zone notice given to the holder of the licence—

(a) the person is liable to the relevant fines specified in subsection (1); and

(b) the relevant forfeiture applies to the licence.

Pt 4 Div. 3A (Heading and ss 66B–66R) inserted by No. 58/2005 s. 7.

Division 3A—Abalone quota

S. 66B inserted by No. 58/2005 s. 7.

66B Existing quota orders

Any quota order or quota notice in respect of the abalone fishery in existence immediately before the commencement of section 7 of the **Fisheries (Abalone) Act 2005** continues in operation until the beginning of the quota period established by the initial abalone quota order made under section 66C.

S. 66C inserted by No. 58/2005 s. 7.

66C Initial abalone quota order

(1) The Minister may, by order published in the Government Gazette—

(a) declare that the whole, or a specified zone or zones, of the abalone fishery is to be managed by the allocation of quotas;

(b) determine the method for setting the number of individual quota units for the quota fishery;

(c) set the number of individual blacklip abalone quota units and individual greenlip abalone quota units to be initially allocated for each Abalone Fishery Access Licence held by the holder of an Abalone Fishery Access Licence in respect of the quota fishery;

(d) set the minimum number of individual blacklip abalone quota units that must be held in respect of each Abalone Fishery Access Licence held by the holder of an Abalone Fishery Access Licence;

(e) determine the circumstances, if any, in which the individual quotas can be exceeded or carried over.

(2) The Minister may revoke or amend an order at any time by order published in the Government Gazette.

(3) The Minister may only amend an order if the amendment is required—

(a) to give effect to the management plan for the abalone quota fishery declared under section 28, or to any change to that plan; or

(b) to correct—

(i) a clerical mistake; or

(ii) an error arising from an accidental slip or omission; or

(iii) a miscalculation of figures.

S. 66D inserted by No. 58/2005 s. 7.

66D Further abalone quota order

(1) The Minister may, by further order published in the Government Gazette—

(a) set the total allowable catch for blacklip abalone and greenlip abalone (by number, volume, weight or value) for a specified period for the abalone quota fishery;

(b) determine the quantity of fish (by number, volume, weight or value) comprising an individual blacklip abalone quota unit and an individual greenlip abalone quota unit in the abalone quota fishery in a specified period.

(2) The Minister may revoke or amend an order at any time by an order published in the Government Gazette.

(3) Without limiting the generality of subsection (2), the Minister may reduce the total allowable catch, or reduce the quantity of fish comprising an individual abalone quota unit before the end of the period to which the total allowable catch or individual abalone quota unit applies.

S. 66E inserted by No. 58/2005 s. 7.

66E Sub-zone abalone orders

(1) The Minister may, by further order published in the Government Gazette—

(a) declare that the abalone quota fishery includes a sub-zone; and

(b) set the portion of the total allowable catch that applies in respect of a specified sub-zone; and

(c) determine the method for allocating that portion of the total allowable catch.

(2) The Minister may revoke or amend an order under subsection (1) at any time by an order published in the Government Gazette.

S. 66E(3) amended by No. 68/2016 s. 83.

(3) The Victorian Fisheries Authority must give the holder of an Abalone Fishery Access Licence in the abalone quota fishery a sub-zone notice setting out details of the allocation of the portion of the

total allowable catch in respect of the specified sub-zone that is applicable to the holder of the Abalone Fishery Access Licence as soon as is practicable after a sub-zone order under this section is published.

S. 66F (Heading) substituted by No. 35/2009 s. 34(1).

66F When abalone quota order takes effect

S. 66F inserted by No. 58/2005 s. 7.

S. 66F(1) repealed by No. 35/2009 s. 34(2).

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S. 66F(2) amended by No. 35/2009 s. 34(3).

(2) An order under section 66C, 66D or 66E has effect from the date it is published in the Government Gazette, or from any later date specified in the order as the date from which it is to have effect.

S. 66G inserted by No. 58/2005 s. 7, amended by No. 68/2016 s. 84.

66G Abalone Fishery Access Licence specification

The Victorian Fisheries Authority must specify on each Abalone Fishery Access Licence details of the individual abalone quota units in respect of which the holder of the Abalone Fishery Access Licence is entitled to take abalone—

(a) when the Abalone Fishery Access Licence is renewed or transferred;

(b) after there is a change in the number of the individual abalone quota units in respect of which the holder of the Abalone Fishery Access Licence is entitled to take abalone.

S. 66H inserted by No. 58/2005 s. 7.

66H Abalone quota unit holding statement

S. 66H(1) amended by No. 68/2016 s. 85(1).

(1) The Victorian Fisheries Authority must issue an abalone quota unit holding statement in respect of the period specified in the further abalone quota order containing the prescribed information to a holder of an individual abalone quota unit—

(a) after the payment of any royalty and levy payable in respect of the individual abalone quota unit; and

(b) after there is a change in the number of the individual abalone quota units held by that holder.

S. 66H(2) amended by No. 68/2016 s. 85(2).

(2) A holder of an individual abalone quota unit may obtain a copy of the relevant abalone quota unit holding statement from the Victorian Fisheries Authority upon application to the Victorian Fisheries Authority and payment of the prescribed fee.

S. 66I inserted by No. 58/2005 s. 7.

66I Entitlement of holder of an individual abalone quota unit

The holder of an individual abalone quota unit is not entitled to take or be in possession of a commercial quantity of abalone unless that person is otherwise authorised under this Act to take or be in possession of a commercial quantity of abalone.

S. 66J inserted by No. 58/2005 s. 7.

66J Notification by holder of an individual abalone quota unit

S. 66J(1) amended by No. 68/2016 s. 86.

(1) The holder of an individual abalone quota unit may in accordance with the prescribed process notify the Victorian Fisheries Authority of the holder of an Abalone Fishery Access Licence who is nominated to take abalone under the individual abalone quota unit.

(2) A notification under this section may nominate a different holder of an Abalone Fishery Access Licence for each individual abalone quota unit.

(3) A notification under this section must contain the prescribed matters.

S. 66K inserted by No. 58/2005 s. 7.

66K Transfer of individual abalone quota units

S. 66K(1) amended by No. 68/2016 s. 87(1).

(1) A transfer of individual abalone quota units may only be made with the approval of the Victorian Fisheries Authority.

S. 66K(2) amended by Nos 68/2016 s. 87(1), 35/2019 s. 8(5).

(2) The holder of an individual abalone quota unit may apply to the Victorian Fisheries Authority for approval to transfer one or more individual abalone quota units to any other person.

(3) A fraction of an individual abalone quota unit cannot be transferred.

S. 66K(4) amended by No. 68/2016 s. 87(2).

(4) The Victorian Fisheries Authority must not grant an application for approval to transfer any individual abalone quota unit to a person unless the Victorian Fisheries Authority is satisfied that —

(a) the person is a fit and proper person to hold individual abalone quota units; and

(b) the person is an individual, a single corporation or a co-operative and is not a partnership or a consortium; and

(c) the person satisfies any relevant eligibility criteria specified in the regulations; and

(d) the holders of any financial interests in the individual abalone quota unit consent to the transfer of the individual abalone quota unit.

S. 66K(5) amended by No. 68/2016 s. 87(3).

(5) An application for the approval of a transfer must be made in the manner and form required by the Victorian Fisheries Authority.

S. 66K(6) amended by No. 68/2016 s. 87(4).

(6) The Victorian Fisheries Authority may grant an application if it is consistent with every quota order and management plan that applies to the abalone quota fishery.

S. 66K(7) amended by No. 68/2016 s. 87(4).

(7) The Victorian Fisheries Authority must refuse to grant an application that is inconsistent with any relevant provision of this Act.

S. 66K(8) amended by No. 68/2016 s. 87(5).

(8) Without limiting subsection (7), the Victorian Fisheries Authority must refuse to grant an application for the approval of a transfer of an individual greenlip abalone quota unit if the total allowable catch for greenlip abalone is set at zero.

(9) Subsection (8) does not apply if the application for the approval of a transfer of an individual greenlip abalone quota unit is made with an application for the transfer of an Abalone Fishery Access Licence for the zone in respect of which the individual abalone quota unit applies.

S. 66L inserted by No. 58/2005 s. 7.

66L Minister may determine that quota units be publicly sold

(1) This section applies if it is proposed—

(a) to create new individual abalone quota units in addition to the individual abalone quota units that were allocated under an initial quota order in excess of any threshold quota limit specified in a management plan; or

(b) to allocate individual abalone quota units that arise in excess of any threshold quota limit specified in a management plan; or

(c) to allocate any individual abalone quota units that have been forfeited, or that have otherwise become available.

(2) The Minister may determine that the individual abalone quota units are to be publicly sold.

(3) In making a determination, the Minister must specify the method by which the sale is to take place.

(4) Without limiting subsection (3), a sale may occur by auction, tender or ballot.

S. 66M inserted by No. 58/2005 s. 7.

66M Offences in relation to individual abalone quota by holders of Abalone Fishery Access Licences

S. 66M(1) amended by No. 35/2019 s. 8(6).

(1) During any specified quota period, the holder of an Abalone Fishery Access Licence or a person who is acting on behalf of a holder of an Abalone Fishery Access Licence in the relevant zone must not take any fish in excess of the specified amount.

Penalty:

(a) For a first offence, 50 penalty units and the forfeiture of whichever is the greater of one individual abalone quota unit or the number of individual abalone quota units equivalent to the quantity of excess fish taken.

(b) For a second offence, 100 penalty units and the forfeiture of whichever is the greater of 3 individual abalone quota units or the number of individual abalone quota units equivalent to double the quantity of excess fish taken.

(c) For a third offence, 150 penalty units and the cancellation of any entitlement of the holder of the Abalone Fishery Access Licence to hold an individual abalone quota unit in the next full quota period after the conviction.

(d) For a subsequent offence, 200 penalty units or 12 months imprisonment or both, and the cancellation of the Abalone Fishery Access Licence.

(2) For the purposes of subsection (1), ***specified amount*** means the amount of fish in kilograms permitted to be taken under the individual abalone quota units specified on the Abalone Fishery Access Licence.

(3) For the purposes of paragraph (c) of the penalty at the foot of subsection (1), a quota period is a full quota period even if it is shortened in any way by a quota order made during the quota period.

(4) If the number of individual abalone quota units not yet taken by the holder in the quota period in which the conviction occurs is less than the number forfeited under paragraph (a) or (b) of the penalty at the foot of subsection (1), the balance of the forfeited number of abalone quota units is forfeited in the next quota period.

(5) For the purposes of subsection (4), any differences in the quantity of fish that comprise an individual quota unit in different periods are to be disregarded.

(6) For the purposes of paragraphs (a) and (b) of the penalty at the foot of subsection (1), if a quantity of fish does not equate exactly to a number of individual abalone quota units, the excess is deemed to be an individual abalone quota unit.

(7) If a person who is acting on behalf of the holder of an Abalone Fishery Access Licence exceeds the specified amount for the Abalone Fishery Access Licence—

(a) he or she is liable to the relevant fines or imprisonment specified in subsection (1); and

(b) the relevant forfeiture applies to the Abalone Fishery Access Licence.

S. 66N inserted by No. 58/2005 s. 7.

66N Offences in relation to abalone sub-zones

(1) During any specified quota period, the holder of an Abalone Fishery Access Licence must not take any fish in excess of the fish specified in the abalone sub-zone notice given to the holder of the Abalone Fishery Access Licence.

Penalty:

(a) For a first offence, 50 penalty units.

(b) For a subsequent offence, 100 penalty units or 6 months imprisonment or both, and the forfeiture of the number of individual abalone quota units equivalent to the quantity of excess fish taken.

(2) If a person who is acting on behalf of the holder of an Abalone Fishery Access Licence takes any fish in excess of the fish specified in the abalone sub-zone notice given to the holder of the Abalone Fishery Access Licence—

(a) the person is liable to the relevant fines specified in subsection (1); and

(b) the relevant forfeiture applies to the Abalone Fishery Access Licence.

S. 66O inserted by No. 58/2005 s. 7.

66O Requirement on holder of an Abalone Fishery Access Licence to hold minimum number of individual blacklip abalone quota units

(1) The holder of an Abalone Fishery Access Licence must ensure that the minimum number of individual blacklip abalone quota units required to be held by the initial abalone quota order is held by the holder for each Abalone Fishery Access Licence held by the holder.

(2) If any of the minimum number of individual blacklip abalone quota units held by the holder of an Abalone Fishery Access Licence is forfeited, the Abalone Fishery Access Licence is by force of this section suspended until the holder of the Abalone Fishery Access Licence acquires the number of individual blacklip abalone quota units necessary to comply with subsection (1).

S. 66O(3) amended by No. 68/2016 s. 88.

(3) If the holder of an Abalone Fishery Access Licence does not comply with subsection (1) at the beginning of the next quota period, the Victorian Fisheries Authority must defer the renewal of the Abalone Fishery Access Licence in accordance with section 57.

S. 66P inserted by No. 58/2005 s. 7, amended by No. 35/2019 s. 8(7).

66P Additional penalty on holder of an individual abalone quota unit in relation to an abalone offence

If a person who is the holder of an individual abalone quota unit is convicted or found guilty by a court of an offence under this Act relating to abalone, the court may, in addition to any other penalty that the court may impose for that offence, order the forfeiture of one or more individual abalone quota units held by that person.

S. 66Q inserted by No. 58/2005 s. 7.

66Q Penalty for failure to pay royalty or levy

(1) This section applies if the royalty or levy imposed in respect of an individual abalone quota unit has not been paid within 14 days of the date that the payment of the royalty or levy was due.

S. 66Q(2) amended by No. 68/2016 s. 89.

(2) If this section applies, the Victorian Fisheries Authority may serve a written notice on the holder of the individual abalone quota unit specifying that the entitlement under the individual abalone

quota unit is suspended until the relevant royalty or levy is paid.

(3) A copy of a notice served under subsection (2) must be sent to each holder of a registered financial interest in the individual abalone quota unit within 7 days of the notice being served under subsection (2).

(4) If the relevant royalty or levy has not been paid within 12 months of the notice being served under subsection (2), the individual abalone quota unit is cancelled on the day after the end of the period of 12 months.

S. 66R inserted by No. 58/2005 s. 7.

66R Forfeiture of individual abalone quota unit

(1) This section applies to an individual abalone quota unit that is forfeited by a court under this Division.

S. 66R(2) amended by No. 68/2016 s. 90.

(2) The Victorian Fisheries Authority must notify each holder of a registered financial interest in the individual abalone quota unit of the forfeiture.

(3) For the purposes of this section, the forfeiture of the individual abalone quota unit is stayed and the individual abalone quota unit is deemed to have been suspended until whichever of the following first occurs—

(a) an appeal against the forfeiture of the individual abalone quota unit is granted; or

(b) if there is no appeal against the forfeiture of the individual abalone quota unit or the appeal is dismissed—

(i) the holder of the individual abalone quota unit or the registered financial interest transfers the individual abalone quota unit to an eligible person in accordance with this Division; or

(ii) the expiry of the period of 6 months after the date on which an appeal should have been lodged or was dismissed (as the case may be).

(4) If subsection (3)(b) applies and the holder of the individual abalone quota unit fails to transfer the individual abalone quota unit in accordance with that subsection, the individual abalone quota unit is cancelled as from the expiry of the period of 6 months specified in that subsection.

(5) If subsection (3)(b) applies but subsection (4) does not apply, the forfeiture of the individual abalone quota unit by the court is revoked on the transfer of the individual abalone quota unit to the eligible person.

Division 4—Fishing closures and restrictions

67 Fishing closures

S. 67 substituted by No. 5/1997 s. 9.

(1) A regulation or fisheries notice may—

S. 67(1)(a) amended by No. 21/2011 s. 3.

(a) fix open and closed seasons for fish; or

(b) prohibit the taking, landing, processing, selling or possessing of fish or fishing bait or a specified species of fish or fishing bait; or

(c) prohibit the use of specified fishing methods.

(2) A prohibition under subsection (1)—

(a) may be absolute or conditional;

(b) may apply in respect of any specified species of fish or fishing bait;

(c) may apply to any waters or to specified waters or areas;

(d) may apply for such period as is specified including—

(i) specified times of the day;

(ii) specified periods of a week, month or year;

(iii) specified periods of more than a year;

(e) may apply in respect of specified classes of fishery licences;

(f) may apply either generally or in specified circumstances or to specified people or classes of people.

(3) A person must not contravene a prohibition under subsection (1).

Penalty: 100 penalty units or imprisonment for 6 months or both.

(4) In addition to the penalty under subsection (3), the regulations or a fisheries notice may provide that, in respect of a specified species of fish, a person is liable to a further penalty—

(a) for a first offence, not exceeding ½ penalty unit for each fish of that species taken, landed, sold or possessed;

S. 67(4)(b) amended by No. 35/2019 s. 8(8).

(b) for a subsequent offence, not exceeding one penalty unit for each fish of that species taken, landed, sold or possessed.

(5) Despite subsection (3), a person may sell or process a fish in a closed season for fish of that species if he or she can prove that the fish was not taken in contravention of a prohibition under subsection (1).

(6) Subsection (5) does not apply to a person in relation to a particular prohibition if the regulation or fisheries notice creating the prohibition

expressly prohibits the sale or processing of fish of that species during the closed season.

S. 68 substituted by No. 5/1997 s. 9.

68 Prohibition to prevail

A prohibition under this Division prevails over any provision to the contrary in this Act.

S. 68A inserted by No. 5/1997 s. 9.

68A Offences in relation to size and catch limits

S. 68A(1) amended by No. 40/2019 s. 17(2).

(1) A person must not use commercial fishing equipment—

S. 68A(1)(a) amended by Nos 50/2005 s. 13(a), 40/2019 s. 17(1).

(a) to take fish that are less than the minimum size, or that are more than the maximum size, for that species of fish; or

(b) to take more fish than the catch limit for that species of fish.

Penalty: 100 penalty units or imprisonment for 6 months or both.

S. 68A(2) amended by Nos 50/2005 s. 13(a), 40/2019 s. 17(3), 40/2019 s. 17(4).

(2) A person must not possess fish that are less than the minimum size, or that are more than the maximum size, for that species of fish if—

(a) the fish were taken by the use of commercial fishing equipment; or

S. 68A(2)(b) amended by No. 35/2009 s. 65.

(b) the fish have been sold or are possessed for sale.

Penalty: 100 penalty units or imprisonment for 6 months or both.

S. 68A(3) amended by No. 80/2000 s. 10(1).

(3) A person must not take or have in his or her possession—

S. 68A(3)(a) amended by Nos 50/2005 s. 13(a), 40/2019 s. 17(5).

(a) fish that are less than the minimum size, or that are more than the maximum size, for that species of fish; or

(b) more fish than the catch limit for that species of fish.

Penalty:20 penalty units.

(4) Subsections (1), (2)(a) and (3)(b) do not apply to abalone.

S. 68A(4A) inserted by No. 80/2000 s. 10(2).

(4A) A person who takes or possesses—

(a) more than the catch limit for abalone; but

(b) not more than twice that catch limit—

is guilty of an offence.

Penalty:20 penalty units.

S. 68A(4B) inserted by No. 80/2000 s. 10(2), amended by No. 40/2019 s. 17(6).

(4B) A person who takes or possesses more than twice the catch limit for abalone is guilty of an offence.

Penalty:100 penalty units or imprisonment for 6 months or both.

S. 68A(4C) inserted by No. 80/2000 s. 10(2), repealed by No. 40/2019 s. 17(7).

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S. 68A(5) substituted by No. 80/2000 s. 10(2), amended by Nos 50/2005 s. 13(a), 40/2019 s. 17(8), 40/2019 s. 17(9).

(5) A person must not use commercial abalone equipment to take abalone that is less than the minimum size, or that is more than the maximum size, for abalone.

Penalty: 100 penalty units or imprisonment for 6 months or both.

S. 68A(6) amended by No. 108/2003 s. 50(b).

(6) Subsections (3)(b), (4A) and (4B) do not apply to a person in the business of processing or selling fish if he or she can prove that any fish in his or her possession that are in excess of the catch limit were taken in accordance with this Act.

S. 68A(7) amended by Nos 80/2000 s. 10(3), 35/2019 s. 8(9).

(7) In addition to any other penalty specified by this section, a person who is guilty of an offence under this section (other than an offence in respect of which an infringement notice has been issued) in relation to a priority species is liable to a penalty of up to one penalty unit for each fish of the priority species that is—

S. 68A(7)(a) amended by Nos 50/2005 s. 13(a), 40/2019 s. 17(10).

(a) less than the minimum size, or that is more than the maximum size, for that species of fish; or

S. 68A(7)(b) amended by No. 50/2005 s. 13(b).

(b) in excess of the catch limit allowed by the regulations or by a fisheries notice for that species of fish.

S. 68A(8) amended by No. 37/2014 s. 10(Sch. item 65.3).

(8) An authorised officer or a police officer may seize —

(a) any undersized fish; and

(b) all fish in any basket, bag, box or receptacle (and the basket, bag, box or receptacle), if more than 5% of those fish are undersized.

(9) This section does not apply to a person who is authorised under this Act to do anything that would otherwise be a contravention of this section.

S. 68B inserted by No. 17/2002 s. 10, amended by No. 40/2019 s. 18.

68B Possession of fish taken in non-Victorian waters

(1) Unless otherwise permitted or authorised under this Act, a person must not have in his or her possession fish taken in waters of the Commonwealth or another State or Territory of the Commonwealth—

(a) that are less than the minimum size, or that are more than the maximum size, specified for that species of fish; or

(b) that are more than the catch limit for that species of fish—

under the corresponding law of the Commonwealth or that State or Territory.

Penalty: If the offence involves exceeding the catch limit for abalone by more than twice the catch limit—100 penalty units or imprisonment for 6 months or both.

In any other case—20 penalty units.

(2) For the purposes of subsection (1), if the corresponding law of the Commonwealth, State or Territory of the Commonwealth does not specify relevant size and catch limits, subsection (1) applies as if the corresponding law of the Commonwealth, State or Territory of the Commonwealth specified the size and catch limits that would apply if the fish had been taken in Victorian waters.

Part 5—Protection of fisheries

Division 1—Protected aquatic biota

69 Declaration of protected aquatic biota

(1) The Governor in Council may by Order in Council declare any taxon or community of aquatic flora and fauna to be protected aquatic biota.

(2) A declaration cannot be made under subsection (1) in respect of—

(a) protected wildlife under the **Wildlife Act 1975**; or

(b) protected flora under the **Flora and Fauna Guarantee Act 1988**.

S. 69(3) amended by No. 108/2003 s. 50(c).

(3) Any taxon or community of fish or aquatic invertebrate listed under the **Flora and Fauna Guarantee Act 1988** whether before or after the commencement of this subsection is deemed to have been declared by Order in Council under this section to be protected aquatic biota.

(4) If the scientific name of a declared taxon or community is changed, the declaration continues to apply to the declared taxon or community as if it referred to the taxon or community by the changed name.

(5) A declaration of a community of aquatic flora or fauna must contain a sufficient description of the community to enable it to be identified.

S. 69(6) substituted by No. 5/1997 s. 10(1).

(6) A declaration must be consistent with any criteria for the declaration of protected aquatic biota determined by the Minister and published in the Government Gazette.

70 Provisions applying to declaration

(1) A declaration made under section 69—

(a) may apply to the whole or to specified parts of the State; or

(b) may apply to all or specified Victorian waters or specified protected waters.

(2) A declaration is a subordinate instrument for the purposes of the **Interpretation of Legislation Act 1984**.

(3) A declaration is subject to any provisions to the contrary in any regulations or fisheries notice.

71 Authorisation in relation to protected aquatic biota

(1) A person must not take, injure, damage, destroy, possess, keep, display for reward, release into Victorian waters or sell any protected aquatic biota without a permit or unless authorised by an Order in Council under section 73.

Penalty:50 penalty units.

S. 71(2) amended by No. 28/2019 s. 49(1).

(2) Subsection (1) does not apply to a person who under the **Flora and Fauna Guarantee Act 1988** is the holder of a licence or permit or is authorised by an Order in Council to take, trade in or keep flora or a listed taxon or community of flora or fauna that includes that protected aquatic biota.

72 Protected aquatic biota permits

S. 72(1) amended by Nos 5/1997 s. 50(1)(i), 68/2016 s. 91(1).

(1) Subject to this Act, the Victorian Fisheries Authority may issue a permit to take, injure, damage, destroy, possess, keep, display for reward, release into Victorian waters or sell protected aquatic biota upon—

(a) the application of a person who satisfies the prescribed eligibility criteria; and

(b) the payment of any fee payable in respect of the issue of the permit.

S. 72(2) amended by No. 68/2016 s. 91(1).

(2) In considering whether to issue a permit the Victorian Fisheries Authority must have regard to —

(a) any relevant management plan; or

(b) if there is no relevant management plan, the welfare of any relevant fishery or aquatic ecosystem.

S. 72(3) amended by No. 68/2016 s. 91(2)(a).

(3) The Victorian Fisheries Authority—

S. 72(3)(a) amended by No. 68/2016 s. 91(2)(b).

(a) must not issue a permit if the Victorian Fisheries Authority considers that—

S. 72(3)(a)(i) amended by No. 5/1997 s. 50(1)(j).

(i) the applicant does not satisfy the relevant eligibility criteria; or

(ii) the issue of the permit would be inconsistent with any relevant management plan, or if there is no relevant management plan, would be harmful to the welfare of any relevant fishery or aquatic ecosystem;

S. 72(3)(b) substituted by No. 5/1997 s. 10(2).

(b) may refuse to issue a permit if the applicant has been convicted of an offence under this Act, the **Fisheries Act 1968**, the **Wildlife Act 1975**, the **Flora and Fauna Guarantee Act 1988** or a law of the Commonwealth or of another State or of a Territory that corresponds to any of those Acts.

S. 72(3)(c) repealed by No. 5/1997 s. 10(2).

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S. 72(4) amended by Nos 5/1997 s. 10(3), 68/2016 s. 91(3).

(4) A permit may be issued for such period not exceeding 3 years as is determined by the Victorian Fisheries Authority.

S. 72(5) amended by No. 68/2016 s. 91(4).

(5) The Victorian Fisheries Authority, by notice served on the permit holder, may revoke the permit if the holder has contravened any of the Acts specified in subsection (3)(b) or any of the conditions of the permit.

S. 72(6) amended by No. 68/2016 s. 91(5).

(6) Before revoking a permit, the Victorian Fisheries Authority must—

(a) give notice of the proposal to the permit holder, specifying—

(i) the grounds for the proposed revocation; and

(ii) that the person may make written or oral submissions about the matter within 28 days after the date of service of the notice;

(b) consider any submissions made in accordance with paragraph (a).

73 Order in Council

(1) The Governor in Council may by Order in Council authorise the taking, keeping, displaying for reward, releasing into Victorian waters or selling of protected aquatic biota other than fish to which Division 3 of Part 5 of the **Flora and Fauna Guarantee Act 1988** applies.

(2) An authorisation under subsection (1)—

S. 73(2)(a) amended by No. 28/2019 s. 49(2).

(a) may apply to a specified taxon or community of flora or fauna;

(b) may apply to a specified aquatic ecosystem;

(c) may apply to a specified class of persons;

(d) may apply for such period as is specified;

(e) is subject to such conditions as are specified.

Division 2—Noxious aquatic species

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S. 74 repealed by No. 5/1997 s. 11.

S. 75 substituted by No. 5/1997 s. 11.

75 Declaration of noxious aquatic species

(1) The Governor in Council may, by Order in Council, declare any aquatic species to be noxious.

(2) A declaration cannot be made under subsection (1) in respect of—

(a) protected aquatic biota; or

(b) protected wildlife, notable wildlife or endangered wildlife under the **Wildlife Act 1975**; or

S. 75(2)(c) amended by No. 28/2019 s. 49(3).

(c) protected flora or part of a taxon or community of flora or fauna listed under the **Flora and Fauna Guarantee Act 1988**.

(3) A declaration under subsection (1)—

(a) may apply to any species of aquatic flora or fauna (whether alive or dead) specified in the declaration, other than mammals, reptiles, amphibians or birds;

(b) may apply to all, or a specified part, of Victoria;

(c) comes into operation on the date the Order in Council is published in the Government Gazette or any later date specified in the declaration as the date of commencement.

(4) A declaration is a subordinate instrument for the purposes of the **Interpretation of Legislation Act 1984**.

(5) The Governor in Council may at any time, by Order in Council, amend or revoke any Order made under subsection (1).

S. 76 substituted by No. 5/1997 s. 12, amended by No. 40/2019 s. 19.

76 Offences concerning prohibited noxious aquatic species

Unless authorised under this Act, a person must not bring into Victoria or take, hatch, keep, possess, sell, transport, put into any container or release into protected waters any aquatic species that is declared to be noxious under section 75.

Penalty:200 penalty units.

Ss 77–80 repealed by No. 5/1997 s. 12.

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S. 81 substituted by No. 5/1997 s. 13.

81 Noxious aquatic species permits

S. 81(1) amended by No. 68/2016 s. 92(1).

(1) The Victorian Fisheries Authority may issue a noxious aquatic species permit to a person authorising the person to do anything that is prohibited by section 76.

S. 81(2) amended by No. 68/2016 s. 92(2).

(2) In considering whether to issue a permit, the Victorian Fisheries Authority must have regard to the welfare of any relevant fishery or aquatic ecosystem.

S. 81(3) amended by No. 68/2016 s. 92(3)(a).

(3) The Victorian Fisheries Authority—

S. 81(3)(a) amended by No. 68/2016 s. 92(3)(b).

(a) must not issue a permit if the Victorian Fisheries Authority considers that—

(i) the applicant does not satisfy the relevant eligibility criteria; or

(ii) the issue of the permit would be inconsistent with the relevant management plan or if there is no relevant management plan, would be harmful to the welfare of any relevant fishery or aquatic ecosystem;

(iii) the permit is sought for a purpose other than a scientific, research, fisheries management, aquaculture or other purpose specified by the regulations;

(b) may refuse to issue a permit if the applicant has been convicted of an offence under this Act, the **Fisheries Act 1968**, the **Catchment and Land Protection Act 1994**, the **Vermin and Noxious Weeds Act 1958**, the **Wildlife Act 1975** or the **Flora and Fauna Guarantee Act 1988** or a law of the Commonwealth or of another State or of a Territory that corresponds to any of those Acts.

(4) If a person kept a noxious aquatic species immediately before the commencement of this section, the person may continue to keep it—

(a) if the person does not apply for a permit within 90 days after that commencement, until the end of that period of 90 days; or

(b) if the person applies for that permit during that period, until the application is determined.

(5) A permit—

S. 81(5)(a) amended by No. 68/2016 s. 92(4).

(a) unless revoked, continues in force for a period not exceeding 3 years as is specified in the permit by the Victorian Fisheries Authority; and

(b) applies to the category of noxious aquatic species specified in the permit; and

(c) is not transferable.

S. 81(6) amended by No. 68/2016 s. 92(4).

(6) A permit is not renewable, but the Victorian Fisheries Authority may issue another permit to a person whose permit is about to expire or who has previously held a permit.

82 Revocation of permit

S. 82(1) substituted by No. 5/1997 s. 14, amended by No. 68/2016 s. 93(1).

(1) The Victorian Fisheries Authority may revoke a noxious aquatic species permit at any time by serving notice of the revocation on the holder of the permit.

S. 82(2) amended by No. 68/2016 s. 93(2).

(2) Before revoking a permit, the Victorian Fisheries Authority must—

(a) give notice of the proposed revocation to the permit holder, specifying—

(i) the grounds for the proposed revocation; and

(ii) that the person may make written or oral submissions about the matter within 28 days after the date of service of the notice;

(b) consider any submissions made in accordance with paragraph (a).

S. 82(3) inserted by No. 40/2019 s. 20.

(3) If the Victorian Fisheries Authority has revoked a permit under subsection (1) on the ground that the holder of the permit has ceased to be a fit and

proper person to hold the permit, the Authority may specify a time not exceeding 7 years within which the same person may not apply for the issue or transfer of a fishery licence, or the issue of a permit, under this Act.

83 Authorisation

S. 83(1) amended by No. 5/1997 s. 50(1)(k).

(1) The Governor in Council may by Order in Council authorise the transporting, putting into containers or releasing into protected waters of a noxious aquatic species.

(2) An authorisation under subsection (1)—

(a) may apply to a specified taxon;

(b) may apply to a specified activity;

(c) may apply to a specified class of person;

(d) may apply to all protected waters or to specified waters or areas;

(e) may apply for such period as is specified;

(f) is subject to such conditions as are specified.

84 Notice to be given of location of noxious aquatic species

S. 84 amended by No. 68/2016 s. 94.

Any person who knowingly comes into possession of, or is in any way concerned in the ownership of, any noxious aquatic species must forthwith in writing give or cause to be given to the Victorian Fisheries Authority information as to the existence and location of that noxious aquatic species.

Penalty:40 penalty units.

85 Seizure and removal of noxious aquatic species

(1) An authorised officer may at any time and at any place in Victoria seize and remove any noxious aquatic species from any protected waters.

S. 85(2) amended by No. 5/1997 s. 50(1)(l).

(2) An authorised officer may by written notice served on any person require that person to take specified measures to destroy any noxious aquatic species in the possession of that person and to produce evidence of that destruction within a specified period.

S. 85(3) amended by No. 68/2016 s. 95(1).

(3) If a person fails to comply with a notice served on that person under subsection (2), the Victorian Fisheries Authority may recover any costs or expenses reasonably incurred by an authorised officer in carrying out the measures specified in the notice as a debt due to the Victorian Fisheries Authority in any court of competent jurisdiction.

S. 85(4) amended by No. 68/2016 s. 95(2).

(4) If the Victorian Fisheries Authority is satisfied that—

(a) a noxious aquatic species exists in any protected waters; and

(b) it is not practicable for that species to be seized and removed—

the Victorian Fisheries Authority may order in writing that the species be destroyed even though other fish or aquatic species may also be destroyed.

(5) An order under subsection (4) may—

(a) specify the method, equipment, chemicals or poison to be used in the destruction of the noxious aquatic species; and

(b) specify any person authorised to carry out the destruction.

S. 86 amended by No. 68/2016 s. 96.

86 Prevention of spread of aquatic noxious species

If the Victorian Fisheries Authority is satisfied that—

(a) a noxious aquatic species has become established in any protected waters; and

(b) there is no practical means of killing or removing the noxious aquatic species—

the Victorian Fisheries Authority may take any action necessary to delay or prevent the spread of the noxious aquatic species from the waters in which it is established to other waters.

S. 87 substituted by No. 5/1997 s. 15.

87 No penalty if noxious aquatic species specimen is killed immediately

Despite anything to the contrary in this Division, if a person who takes any thing that is declared to be a noxious aquatic species immediately kills it, the person is not liable to any penalty under this Division.

Division 3—Fisheries reserves

88 Fisheries reserves

S. 88(1) amended by No. 17/2002 s. 11(1), substituted by No. 108/2003 s. 39(1).

(1) The Governor in Council may, by Order in Council, declare as a fisheries reserve—

(a) any waters that are not reserved under the **National Parks Act 1975**; or

(b) any Crown land under the **Land Act 1958**; or

(c) any land reserved under section 4 of the **Crown Land (Reserves) Act 1978** if the use of the land as a fisheries reserve will not be detrimental to the purposes for which the land was reserved under that section.

(2) The Order in Council must—

S. 88(2)(a) amended by No. 108/2003 s. 39(2)(a).

(a) identify the area which is to constitute the fisheries reserve; and

(b) specify the purpose of the fisheries reserve which must be consistent with the objectives of this Act, including one or more of the following—

(i) spawning, hatching or nursery;

(ii) critical habitat;

(iii) aquaculture;

(iv) harvesting;

(v) management or monitoring;

(vi) education, research or scientific;

(vii) non-consumptive uses of fish or protected aquatic biota.

(3) An Order in Council cannot be made under this section unless—

S. 88(3)(a) repealed by No. 35/2009 s. 35.

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S. 88(3)(b) substituted by No. 108/2003 s. 39(2)(b).

(b) in the case of any Crown land under the **Land Act 1958**, the Minister has consulted with the Minister responsible for that land under that Act; and

S. 88(3)(ba) inserted by No. 108/2003 s. 39(2)(b).

(ba) in the case of any land reserved under section 4 of the **Crown Land (Reserves) Act 1978**, the Minister has consulted with the Minister responsible for that land under that Act; and

(c) the Minister has published a notice of intention to declare the fisheries reserve in a newspaper circulating generally in Victoria and in a newspaper circulating generally in

the area of the proposed fisheries reserve at least 2 months before the Order in Council is to be made.

(4) The notice of intention must specify—

S. 88(4)(a) amended by No. 108/2003 s. 39(2)(a).

(a) the area which is to be constituted as a fisheries reserve; and

(b) the purpose of the proposed fisheries reserve; and

(c) the procedures for making public comments and considering submissions.

(5) A marine reserve proclaimed under section 79A of the **Fisheries Act 1968** continues to be a marine reserve as if subsections 79A(1), 79A(2), 79A(4) and 79A(5) had not been repealed until—

(a) it is declared to be a fisheries reserve; or

(b) it is proclaimed to be a park or reserve under the **National Parks Act 1975**; or

S. 88(5)(c) repealed by No. 17/2002 s. 11(2).

* * * * *

(d) the proclamation is revoked—

whichever first occurs.

(6) A declaration under this section is a subordinate instrument for the purposes of the **Interpretation of Legislation Act 1984**.

S. 88(7) repealed by No. 17/2002 s. 11(2).

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89 Provisions applying to fisheries reserves

(1) The Minister may establish a committee of management for a fisheries reserve under section 14 of the **Crown Land (Reserves) Act 1978** as if it were permanently reserved under that Act and that Act shall apply in respect of the committee of management accordingly.

(2) A management plan must be prepared in respect of a fisheries reserve in accordance with Part 3.

S. 89(3) amended by No. 40/2019 s. 21(1).

(3) A fisheries notice, the regulations or an Order in Council may—

(a) prohibit or regulate fishing, the use of any equipment or any other activity in the fisheries reserve; and

S. 89(3)(b) amended by No. 68/2016 s. 97.

(b) provide for the issue of permits by the Victorian Fisheries Authority; and

S. 89(3)(c) amended by No. 68/2016 s. 97, substituted by No. 40/2019 s. 21(2).

(c) impose penalties not exceeding 20 penalty units for any contravention of—

(i) the fisheries notice; or

(ii) the regulations; or

(iii) the Order in Council; or

(iv) a permit issued by the Victorian Fisheries Authority.

S. 89(4) substituted by No. 40/2019 s. 21(3).

(4) If there is any inconsistency between a fisheries notice, the regulations, an Order in Council or a licence or permit issued under this Act—

(a) the fisheries notice prevails to the extent of the inconsistency over the regulations, the Order in Council, the licence or the permit; and

(b) the regulations prevail to the extent of the inconsistency over the Order in Council, the licence or the permit; and

(c) the Order in Council prevails to the extent of the inconsistency over the licence or the permit; and

(d) the relevant licences or permits are to be amended as soon as is practicable to remove the inconsistency.

S. 89(5) amended by No. 40/2019 s. 21(4).

(5) An authorised officer may direct any person—

(a) to immediately leave the fisheries reserve;

(b) to cease engaging in prohibited activities in the fisheries reserve;

(c) to remove any matter or thing from the fisheries reserve—

if in the opinion of the authorised officer the person, activity or thing is contravening a fisheries notice, the regulations, an Order in Council or a permit issued in respect of the fisheries reserve.

(6) A person must comply with any direction given under subsection (5).

Penalty:20 penalty units.

Pt 6 (Heading and ss 90–100) amended by Nos 5/1997 ss 16, 17, 17/2002 ss 12, 13, 108/2003 s. 40, repealed by No. 35/2009 s. 36, new Pt 6 (Heading and ss 90–97B) inserted by No. 64/2013 s. 4.

Part 6—Fisheries Advisory Council

New s. 90 inserted by No. 64/2013 s. 4.

90 Fisheries Advisory Council

The Fisheries Advisory Council is established.

New s. 91 inserted by No. 64/2013 s. 4.

91 Function of the Council

The function of the Council is to advise the Minister on strategic matters relating to the management of fisheries at the request of the Minister.

New s. 92 inserted by No. 64/2013 s. 4.

92 Council is public entity

The Council is a public entity for the purposes of the **Public Administration Act 2004**.

New s. 93 inserted by No. 64/2013 s. 4.

93 Membership of Council

The Council consists of the following 14 members appointed by the Minister—

(a) a member who, in the opinion of the Minister, is independent of the commercial and recreational fishing sectors who is appointed as the chairperson by the Minister;

(b) 4 members who, in the opinion of the Minister, have knowledge and experience in commercial fishing and represent the interests of the Victorian fishing commercial sector;

(c) one member who, in the opinion of the Minister, has knowledge and experience in commercial fishing and represents the Commonwealth commercial fishing sector;

(d) 4 members who, in the opinion of the Minister, have knowledge and experience in recreational fishing and represent the Victorian recreational fishing sector;

(e) one member who, in the opinion of the Minister, has knowledge and experience in recreational fishing and represents the Victorian recreational fishing business sector;

(f) one Aboriginal person who, in the opinion of the Minister, has knowledge and experience of Aboriginal fishing and represents the interests of the Aboriginal community;

(g) one fisheries ecologist who, in the opinion of the Minister, has knowledge and experience of the sustainable use of aquatic resources and represents the community interest in the sustainable use of those resources;

(h) one economist who, in the opinion of the Minister, has knowledge and experience of fisheries or natural resource economics.

New s. 94 inserted by No. 64/2013 s. 4.

94 Deputy chairperson

The Minister may appoint a member of the Council to be a deputy chairperson of the Council.

New s. 95 inserted by No. 64/2013 s. 4.

95 Terms of appointment of members

A member of the Council—

(a) holds office for the term, not exceeding 3 years, specified in the instrument of appointment but, subject to paragraph (b), is eligible for re-appointment; and

(b) cannot hold office for more than 2 consecutive terms; and

(c) is appointed on the terms and conditions that are specified in the instrument of appointment; and

(d) is entitled to be paid the fees and allowances (if any) that are fixed from time to time in respect of him or her by the Minister.

New s. 96 inserted by No. 64/2013 s. 4.

96 Resignation and removal of members

(1) The office of a member of the Council becomes vacant if the member—

(a) dies; or

(b) resigns from the office of member by notice in writing signed by him or her and delivered to the Minister; or

(c) completes a term of office and is not reappointed; or

(d) is removed from office by the Minister under subsection (5).

(2) A resignation of a member takes effect on the day that it is received by the Minister or any later day specified in the notice of resignation.

(3) If the office of a member of the Council becomes vacant, the chairperson must notify the Minister of the vacancy.

(4) If the office of the chairperson becomes vacant, the deputy chairperson must notify the Minister of the vacancy.

(5) The Minister may remove a member of the Council from office if—

(a) the Minister is of the opinion that the member has engaged in misconduct or has failed, or is unable, to properly carry out the member's functions as a member of the Council; or

(b) the Minister is of the opinion that any other act or omission of the member has adversely affected the operation of the Council; or

(c) in the case of the chairperson, the chairperson is absent, without leave being approved by the Minister, from 3 or more consecutive meetings of the Council; or

(d) in the case of any other member of the Council, the member is absent, without leave being approved by the chairperson, from 3 or more consecutive meetings of the Council of which reasonable notice has been given to the member, either personally or by post, fax, email or other electronic communication.

New s. 97 inserted by No. 64/2013 s. 4.

97 Department's representative at Council meetings

(1) The Minister may approve a person employed under Part 3 of the **Public Administration Act 2004** in the Department to be the Department's representative at meetings of the Council.

(2) A person approved under subsection (1) or his or her nominee must attend all meetings of the Council as the Department's representative unless the Council requests the person or his or her nominee not to attend part or all of a meeting.

(3) The Department's representative or his or her nominee may participate in discussions at

meetings that he or she attends but is not a member of the Council.

S. 97A inserted by No. 64/2013 s. 4.

97A Proceedings of the Council

(1) A majority of the members of the Council currently holding office constitutes a quorum of the Council.

(2) The chairperson, or in his or her absence, the deputy chairperson, or in the absence of both of them, a member of the Council elected by the members present, must preside at a meeting of the Council.

(3) Subject to this Act, the regulations and any guidelines made under subsection (4), the Council may regulate its own proceedings.

(4) The Minister may make guidelines for the proceedings of the Council, which must be published on the Department's website.

S. 97B inserted by No. 64/2013 s. 4.

97B Annual reports

The Council must give the Minister a report on the performance of its functions during a financial year no later than 1 November following that year.

Part 7—Enforcement and legal proceedings

Division 1—Enforcement powers

S. 98 (Heading) amended by No. 40/2019 s. 22(1).

New s. 98 inserted by No. 69/2004 s. 4.

98 References in this Part to offences include associated offences under other Acts

(1) An ***associated offence*** is—

(a) an offence against section 194 or 195 of the **Crimes Act 1958** where the proceeds of crime are the proceeds of an offence under this Act that is also a forfeiture offence under the **Confiscation Act 1997**;

(b) an offence against section 195A of the **Crimes Act 1958** where the instrument of crime is used to commit an offence under this Act that is also a forfeiture offence under the **Confiscation Act 1997**;

(c) an offence against one of the following provisions of the **Crimes Act 1958** in respect of an offence against this Act—

(i) section 321(1) (conspiracy to commit an offence);

(ii) section 321G(1) (incitement);

(iii) section 321M (attempt to commit indictable offence);

(iv) section 321O(2) (attempt to commit indictable offence outside Victoria);

(v) section 325(1) (accessories);

S. 98(1)(c)(vi) amended by No. 40/2019 s. 22(2).

(vi) section 326(1) (concealing offences for benefit);

S. 98(1)(d) inserted by No. 40/2019 s. 22(3), amended by No. 28/2023 s. 118.

(d) an offence against section 30(1) of the **Bail Act 1977** in respect of an offence against this Act;

S. 98(1)(e) inserted by No. 40/2019 s. 22(3).

(e) an offence against section 31(1)(c) of the **Crimes Act 1958** (assault or threaten a person) where the person assaulted or threatened is an authorised officer or police officer performing a function or exercising a power under this Act, or is a person assisting the authorised officer or police officer;

S. 98(1)(f) inserted by No. 40/2019 s. 22(3).

(f) an offence against section 82(1) of the **Crimes Act 1958** (obtaining financial advantage by deception) that is committed by doing or omitting to do an act in contravention of this Act;

S. 98(1)(g) inserted by No. 40/2019 s. 22(3).

(g) an offence against section 83(1) of the **Crimes Act 1958** (false accounting) in relation to an account, record or document that is required to be made, kept or produced for the purposes of this Act;

S. 98(1)(h) inserted by No. 40/2019 s. 22(3).

(h) an offence against section 83A of the **Crimes Act 1958** (falsification of documents) in relation to a document that is required to be made, kept or produced for the purposes of this Act;

S. 98(1)(i) inserted by No. 40/2019 s. 22(3).

(i) an offence against section 254(1) of the **Crimes Act 1958** (destruction of evidence) in relation to legal proceedings under this Act;

S. 98(1)(j) inserted by No. 40/2019 s. 22(3).

(j) an offence against section 5AA, 6(1), 6(2) or 7(1) of the **Control of Weapons Act 1990** where the prohibited weapon, controlled weapon or dangerous article is identified by

an authorised officer or police officer in the course of performing a function or exercising a power under this Act;

S. 98(1)(ja) inserted by No. 30/2021 s. 87.

(ja) an offence against section 45A or 45B of the **Victorian Fisheries Authority Act 2016**;

S. 98(1)(k) inserted by No. 40/2019 s. 22(3).

(k) an offence against section 49E of the **Summary Offences Act 1966** (escaping from lawful custody) in respect of an offence against this Act.

(2) A reference in this Part to an offence under, against, or contrary to, this Act is to be read as including a reference to an associated offence.

S. 98(3) amended by No. 37/2014 s. 10(Sch. item 65.4).

(3) If this Act authorises an authorised officer or a police officer to exercise a power for the purpose of ascertaining whether or not the provisions of this Act are being observed, the authorised officer or police officer may also exercise that power for the purpose of ascertaining whether or not an associated offence has been committed.

(4) A reference in this Part to a contravention of this Act is to be read as including a reference to the commission of an associated offence.

(5) A reference in this Part to an offence under, against or contrary to, a particular provision of this Act is to be read as including a reference to any associated offence committed in respect of that provision.

New s. 99 inserted by No. 17/2002 s. 14, repealed by No. 69/2004 s. 19.

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New s. 100 inserted by No. 17/2002 s. 14, repealed by No. 69/2004 s. 17.

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S. 101 amended by Nos 5/1997 s. 50(1)(m)(i)(ii), 17/2002 s. 15, repealed by No. 69/2004 s. 17.

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S. 101A inserted by No. 108/2003 s. 9.

101A Authorised officer may execute warrant to arrest

(1) An authorised officer may execute a warrant to arrest issued in respect of an offence under this Act.

S. 101A(2) amended by No. 37/2014 s. 10(Sch. item 65.5).

(2) A warrant to arrest directed to a named authorised officer may be executed by any authorised officer or police officer.

S. 101B inserted by No. 108/2003 s. 9.

101B Powers of arrest

S. 101B(1) amended by No. 37/2014 s. 10(Sch. item 65.6(a)).

(1) This section applies if an authorised officer or a police officer believes on reasonable grounds that a person has committed an offence under this Act.

S. 101B(2) amended by No. 37/2014 s. 10(Sch. item 65.6(b)).

(2) The authorised officer or police officer may without warrant arrest the person if the authorised officer or police officer believes on reasonable grounds that the arrest is necessary for any one or more of the following reasons—

(a) to ensure the appearance of the person before a court of competent jurisdiction; or

(b) to prevent the continuation or repetition of the offence or the commission of a further offence; or

(c) to prevent the concealment, loss or destruction of evidence relating to an offence; or

(d) to prevent the fabrication of evidence in relation to an offence; or

(e) to prevent the harassment of, or interference with, a potential witness in proceedings in respect of an offence.

S. 101B(3) amended by No. 37/2014 s. 10(Sch. item 65.6(b)).

(3) The authorised officer or police officer may ask any other person to assist him or her to arrest an alleged offender, and that other person may assist in the arrest.

(4) If an alleged offender is arrested under this section in respect of a summary offence, he or she may only be detained for so long as the reason for the arrest under subsection (2) continues. The person detaining the alleged offender must release the alleged offender as soon as the reason ceases to exist, regardless of whether or not the alleged offender has been charged with the offence.

Note

Division 1(30A) of Part III of the **Crimes Act 1958** sets out the procedure that is to be followed by an authorised officer after an arrest under this Division.

S. 101C inserted by No. 108/2003 s. 9, amended by No. 37/2014 s. 10(Sch. item 65.7).

101C Power to arrest person in breach of an order

An authorised officer or a police officer may without warrant arrest a person who the authorised officer or police officer suspects is breaching, or has just breached, an order imposed on the person under section 130, 130A or 130B.

S. 101D inserted by No. 108/2003 s. 9.

101D Arrest on reasonable grounds not to be taken to be unlawful

An arrest under section 101B or 101C does not cease to be lawful merely because it subsequently appears, or is found, that the person arrested did not commit the offence the arresting officer believed he or she had committed.

S. 101E inserted by No. 108/2003 s. 9.

101E Power to arrest person released on bail

(1) An authorised officer may without warrant arrest a person who has been released on bail in respect of an offence under this Act—

(a) if the officer suspects on reasonable grounds that the person is breaking, has broken, or is likely to break, any of his or her bail conditions; or

S. 101E(1)(b) amended by No. 28/2023 s. 69(1)(a).

(b) if the officer is notified in writing by any of the person's bail guarantors that the bail guarantor believes that the person is likely to break the condition for his or her appearance and for that reason the bail guarantor wishes to be relieved of his or her obligations as a bail guarantor; or

S. 101E(1)(c) amended by No. 28/2023 s. 69(1)(b).

(c) if the officer has reasonable grounds for suspecting that any bail guarantor is dead, or that for any other reason the security is no longer sufficient.

(2) Sections 24(2) to 24(5) of the **Bail Act 1977** apply to an arrest under this section as if a reference in section 24(2) to "subsection (1)" was a reference to subsection (1).

S. 101E(3) inserted by No. 28/2023 s. 69(2).

(3) In this section—

bail guarantor has the same meaning as in the **Bail Act 1977**.

S. 101F inserted by No. 108/2003 s. 9.

101F Power to arrest a person against whom a warrant has been issued

S. 101F(1) amended by No. 37/2014 s. 10(Sch. item 65.8(a)).

(1) If a warrant to arrest a person who is charged with an offence under this Act has been issued, an authorised officer or a police officer may arrest the person even though the authorised officer or police officer does not have the execution copy of the warrant in his or her possession.

(2) Sections 65(2) to 65(6) of the **Magistrates' Court Act 1989** apply to an arrest under this section as if —

(a) a reference in those sections to "subsection (1)" was a reference to subsection (1); and

S. 101F(2)(b) amended by No. 37/2014 s. 10(Sch. item 65.8(b)).

(b) a reference to a police officer included a reference to an authorised officer.

S. 101G inserted by No. 108/2003 s. 9.

101G Power to search person for priority species

S. 101G(1) amended by No. 37/2014 s. 10(Sch. item 65.9(a)).

(1) If an authorised officer, or a police officer, suspects on reasonable grounds that a person has on or about his or her body any fish of a priority species that the person is not lawfully authorised to have in his or her possession, the authorised officer or police officer may search the person.

S. 101G(2) amended by No. 37/2014 s. 10(Sch. item 65.9(b)(i)).

(2) Before searching a person, if the authorised officer or police officer—

S. 101G(2)(a) amended by No. 37/2014 s. 10(Sch. item 65.9(b)(ii)).

(a) is not in uniform, he or she must produce for inspection by the person to be searched evidence of his or her identity as an authorised officer or police officer;

S. 101G(2)(b) amended by No. 37/2014 s. 10(Sch. item 65.9(b)(ii)).

(b) is in uniform, he or she must produce for inspection by the person to be searched evidence of his or her identity as an authorised officer or police officer if asked to do so by the person.

S. 101G(3) amended by No. 37/2014 s. 10(Sch. item 65.9(c)).

(3) In searching a person under this section, the authorised officer or police officer—

(a) may run his or her hands over the person's outer clothing; and

(b) may require the person to remove any coat, jacket, hat or shoes the person is wearing, and may run his or her hands over the person's remaining outer clothing; and

S. 101G(3)(c) amended by No. 37/2014 s. 10(Sch. item 65.9(c)).

(c) if the authorised officer or police officer sees or detects any thing that he or she has reasonable grounds for suspecting is, or contains, fish of a priority species, may require the person to surrender that item for inspection; and

(d) may use reasonable force to remove an item from a person if the person does not comply with a requirement to remove or surrender the item under paragraph (b) or (c); and

(e) may inspect any item that a person has removed or surrendered, or that has been removed from a person; and

(f) must conduct the search in a manner that affords, to the extent that the circumstances

of the search permit, reasonable privacy to the person being searched; and

(g) must conduct the search as quickly as is reasonably practicable in the circumstances of the search.

(4) A search must be conducted by a person of the same sex as the person being searched unless it is not reasonable or practicable to do so in the circumstances of the search.

S. 101H inserted by No. 108/2003 s. 9.

101H Records of searches

(1) As soon as possible after completing a search, the person who conducted the search must record in writing details of the search, including the grounds on which the search was conducted, the time and place of the search, the name (if known) of the person who was searched and the result of the search.

S. 101H(2) amended by Nos 37/2014 s. 10(Sch. item 65.10), 68/2016 s. 98(1).

(2) The Chief Commissioner of Police must ensure that a copy of every record created by a police officer under this section is given to the chief executive officer as soon as is practicable after the creation of the record.

S. 101H(3) amended by Nos 68/2016 s. 98(2), 35/2019 s. 8(10).

(3) The chief executive officer must give a person who has been searched under section 101G a copy of the record of the search without charge if asked to do so by the person within one year after the date of the search.

S. 101I inserted by No. 108/2003 s. 9, amended by No. 68/2016 s. 99.

101I Information on searches to be included in annual report

As soon as is practicable after the end of a financial year, the Victorian Fisheries Authority must provide to the Minister for inclusion in the Victorian Fisheries Authority's annual report of operations under section 40 of the **Victorian**

Fisheries Authority Act 2016 a report containing —

(a) the number of searches conducted under section 101G in that financial year; and

(b) the number and type of priority species found during the course of those searches; and

(c) any other information requested by the Minister.

102 Powers of entry and inspection

S. 102(1) amended by No. 37/2014 s. 10(Sch. item 65.11(a)).

(1) In the administration of this Act or for ascertaining whether or not the provisions of this Act, the regulations or a fisheries notice are being observed, an authorised officer or police officer may without any further or other authority than this section, at any reasonable time having regard to all the circumstances and with such persons as the authorised officer or police officer thinks necessary, enter upon any land or protected waters or any premises other than a dwelling house for the purposes specified in subsection (2).

(2) The purposes are—

S. 102(2)(a) amended by No. 5/1997 s. 50(1)(n)(i).

(a) inspecting or searching for any fishing equipment or fish, protected aquatic biota or noxious aquatic species;

(b) surveying any land for the purposes of this Act;

(c) constructing, erecting and maintaining posts, buoys, beacons or other marks for or in connection with the boundaries of areas held under this Act or the subject of applications made for the purposes of this Act;

(d) examining whether the conditions of any licence, permit or other authority under this Act are being complied with;

S. 102(2)(e) amended by No. 5/1997 s. 50(1)(n)(ii).

(e) searching for or seizing and removing any noxious aquatic species;

S. 102(2)(f) amended by No. 37/2014 s. 10(Sch. item 65.11(a)).

(f) searching for or seizing and removing or destroying any fish which the authorised officer or police officer believes on reasonable grounds are contaminated in a way, or are in a state, that might render them dangerous for consumption by humans or animals;

S. 102(2)(g) amended by No. 5/1997 s. 50(1)(n)(ii).

(g) destroying any noxious aquatic species;

S. 102(2)(h) amended by No. 5/1997 ss 18(a), 50(1)(n)(i), substituted by No. 17/2002 s. 16, amended by No. 37/2014 s. 10(Sch. item 65.11(a)).

(h) inspecting any document which the authorised officer or police officer reasonably believes to be relevant for the purpose of ascertaining whether or not the provisions of this Act, the regulations or a fisheries notice are being observed;

S. 102(2)(ha) inserted by No. 17/2002 s. 16.

(ha) making extracts, copies or notes of the contents of a document inspected under paragraph (h);

(i) seizing any such document if, in the reasonable belief of the authorised officer, the document may assist in the enforcement of this Act.

S. 102(3) amended by No. 37/2014 s. 10(Sch. item 65.11(a)).

(3) Any authorised officer or police officer may at any time without warrant search any parcel, basket, bag, box, receptacle, boat, aircraft or vehicle whatsoever or any premises other than a dwelling house for any document or thing.

S. 102(4) amended by No. 37/2014 s. 10(Sch. item 65.11(a)).

(4) An authorised officer or police officer may direct the operator of any boat, the driver of any vehicle or the pilot of any aircraft to stop the boat, vehicle or aeroplane.

S. 102(5) amended by No. 37/2014 s. 10(Sch. item 65.11(a)).

(5) If in the circumstances it would be unreasonable or unsafe for the operator, driver or pilot to comply with a directive under subsection (4), the authorised officer or police officer may direct the operator, driver or pilot to proceed elsewhere and stop.

(6) An authorised officer may upon reasonable notice —

S. 102(6)(a) amended by Nos 5/1997 s. 50(1)(o), 17/2002 s. 17.

(a) require the production of any records required by this Act to be kept; and

(b) examine any such records when so produced; and

(c) make extracts, copies or notes of the contents.

S. 102(6A) inserted by No. 50/2005 s. 14.

(6A) An authorised officer may upon reasonable notice —

(a) require a person to produce a document, which the authorised officer reasonably believes to be relevant for the purpose of ascertaining whether or not the provisions of this Act, the regulations or a fisheries notice are being observed; and

(b) examine the document; and

(c) make copies of the document or take extracts from it; and

(d) remove the document for as long as is reasonably necessary to make copies or take extracts from it.

S. 102(6B) inserted by No. 50/2005 s. 14.

(6B) A person is not excused from producing a record under subsection (6) or a document under subsection (6A) on the ground that the production of the record or document would tend to incriminate the person or make the person liable to a penalty.

S. 102(6C) inserted by No. 50/2005 s. 14.

(6C) If, before producing a document under subsection (6A), a natural person claims that the producing of the document would tend to incriminate him or her or to make him or her liable to a penalty, the document is not admissible in evidence against the person in any criminal or civil proceeding, or in any proceeding for the imposition of a penalty, against the person, other than in a proceeding for an offence under section 111(1)(f).

S. 102(6D) inserted by No. 40/2019 s. 23.

(6D) An authorised officer or police officer may require a person to produce for inspection any fish or fishing equipment that is in the person's possession.

S. 102(7) amended by No. 37/2014 s. 10(Sch. item 65.11(b)(i)).

(7) An authorised officer or police officer may require the holder of a licence or permit to produce the licence or permit for inspection on demand either —

(a) immediately; or

S. 102(7)(b) amended by No. 37/2014 s. 10(Sch. item 65.11(b)(ii)).

(b) if the holder does not have the licence or permit in his or her possession, at a time within 7 days of the demand and a place stipulated by the authorised officer or police officer.

Penalty: 4 penalty units.

S. 102(8) amended by No. 37/2014 s. 10(Sch. item 65.11(c)).

(8) If an authorised officer or a police officer directs a person to produce a licence or permit at a subsequent time and place, it is a sufficient compliance with the direction if the person sends by post to the authorised officer or police officer

within 7 days after first returning to his or her place of residence after the demand is made, the licence or permit and a stamped addressed envelope for the return of the licence or permit.

S. 102(9) amended by Nos 37/2014 s. 10(Sch. item 65.11(d)), 6/2018 s. 68(Sch. 2 item 56.2).

(9) The statement on oath or by affirmation of an authorised officer or a police officer that the holder of a licence or permit failed to produce on demand on a specified day the licence or permit and, having been directed to produce the licence or permit to the authorised officer or police officer within 7 days thereafter, failed to produce or to send by post the licence or permit, is evidence until the contrary is proven, that the person was not the holder of a licence or permit under the Act on that specified day.

S. 102A inserted by No. 17/2002 s. 18.

102A Production of financial records

S. 102A(1) amended by No. 37/2014 s. 10(Sch. item 65.12).

(1) An authorised officer or police officer may, upon reasonable notice, for the purpose of ascertaining whether or not the provisions of this Act, the regulations or a fisheries notice are being observed—

(a) require the production of any financial, accounting or business records kept by the holder of a licence or permit which relate to any activity connected with being the holder of the licence or permit; and

(b) examine those records when so produced; and

(c) make extracts, copies or notes of the contents.

(2) For the purposes of subsection (1), financial, accounting or business records created on behalf of the holder of a licence or permit and in the

possession of a third party are deemed to be kept by the holder of the licence or permit.

S. 103 (Heading) inserted by No. 69/2004 s. 6(1)(a).

103 Powers to search land or premises

S. 103(1) amended by Nos 69/2004 s. 6(1)(b), 37/2014 s. 10(Sch. item 65.13(a)).

(1) A magistrate may issue a warrant to an authorised officer or a police officer to enter any land or premises (including a dwelling house) specified in the warrant at any time.

S. 103(2) amended by Nos 6/2018 s. 68(Sch. 2 item 56.2), 40/2019 s. 24(1)(2).

(2) A magistrate may only issue the warrant if he or she is satisfied that there are reasonable grounds for suspecting—

S. 103(2)(a) amended by No. 69/2004 s. 6(1)(c).

(a) that an offence against this Act, a regulation or a fisheries notice has occurred or is occurring or is about to occur at the land or premises; or

S. 103(2)(b) amended by No. 69/2004 s. 6(1)(c).

(b) that evidence of an offence against this Act, a regulation or a fisheries notice is present at the land or premises.

S. 103(3) amended by Nos 108/2003 s. 10, 37/2014 s. 10(Sch. item 65.13(b)(i)).

(3) The warrant authorises any authorised officer or police officer to—

S. 103(3)(a) amended by No. 69/2004 s. 6(1)(c).

(a) enter and search the land or premises specified in the warrant;

S. 103(3)(b) amended by No. 5/1997 s. 50(1)(p), substituted by No. 69/2004 s. 6(2), amended by No. 37/2014 s. 10(Sch. item 65.13(b)(ii)).

(b) seize any evidence of an offence against any law or any thing used in connection with such an offence (including boats, trailers, aircraft, motor vehicles, non-motorised vehicles, communications equipment, viewing or scanning devices, fishing equipment, diving equipment, processing equipment, tools, electronic equipment, office equipment, provisions, materials, fish, protected aquatic biota, noxious aquatic species, and documents) found on the land or premises and anything that the authorised officer or police officer believes, on reasonable grounds, may be evidence of an offence against this Act, a regulation or a fisheries notice;

S. 103(3)(c) amended by No. 69/2004 s. 6(1)(c).

(c) seize and destroy any aquatic noxious species and any fish which he or she believes on reasonable grounds is contaminated in a way, or is in a state, that might render it dangerous for consumption by humans or animals that are found at the land or premises;

(d) use any assistance or force that may be reasonably necessary to do any of the things listed in paragraph (a), (b) or (c).

(4) A magistrate may issue the warrant to have effect for up to 72 hours after it is issued.

S. 103(5) amended by No. 40/2019 s. 24(3).

(5) A warrant has no force unless there is included on it—

S. 103(5)(a) amended by No. 69/2004 s. 6(1)(c).

(a) the address of the land or premises in respect of which it has been issued; and

(b) the name of the person to whom it has been issued; and

(c) the date and time at which it expires; and

(d) a copy of this section.

S. 103(6) inserted by No. 69/2004 s. 6(3), amended by No. 37/2014 s. 10(Sch. item 65.13(c)).

(6) Nothing in this section is intended to limit the powers conferred on an authorised officer or a police officer by any other section of this Act.

S. 103(7) inserted by No. 40/2019 s. 24(4).

(7) A search warrant under this section must be issued in accordance with the **Magistrates' Court Act 1989** and in the form prescribed under that Act.

S. 103(8) inserted by No. 40/2019 s. 24(4).

(8) The rules to be observed with respect to search warrants mentioned in the **Magistrates' Court Act 1989** extend and apply to warrants under this section.

S. 103A inserted by No. 69/2004 s. 7.

103A Announcement before entry

S. 103A(1) amended by No. 37/2014 s. 10(Sch. item 65.14(a)).

(1) Before executing a search warrant, the authorised officer or police officer executing the warrant—

(a) must announce that he or she is authorised by the warrant to enter the land or premises; and

(b) must give any person on the land or premises an opportunity to allow entry to the land or premises.

S. 103A(2) amended by No. 37/2014 s. 10(Sch. item 65.14(b)).

(2) The authorised officer or police officer need not comply with subsection (1) if he or she believes, on reasonable grounds, that immediate entry to the land or premises is required to ensure—

(a) the safety of any person; or

(b) that the effective execution of the warrant is not frustrated.

S. 103B inserted by No. 69/2004 s. 7.

103B Details of warrant to be given to occupier

S. 103B(1) amended by No. 37/2014 s. 10(Sch. item 65.15).

(1) If the occupier is present on land or premises where a search warrant is being executed, the authorised officer or police officer must—

(a) identify himself or herself to the occupier; and

(b) give to the occupier a copy of the warrant.

S. 103B(2) amended by No. 37/2014 s. 10(Sch. item 65.15).

(2) If the occupier is not present on the land or premises where a search warrant is being executed but another person is present, the authorised officer or police officer must—

(a) identify himself or herself to that person; and

(b) give the person a copy of the warrant.

104 Provisions relating to the seizure of items

S. 104(1) amended by No. 37/2014 s. 10(Sch. item 65.16(a)).

(1) If an authorised officer or a police officer seizes any thing under section 102, 103 or 105 from a person who is present at the time of the seizure, the authorised officer or police officer must as soon as practicable give the person a written receipt for the thing seized.

S. 104(2) amended by Nos 37/2014 s. 10(Sch. item 65.16(b)), 68/2016 s. 100.

(2) In all other cases, if an authorised officer or a police officer seizes a thing and it is not possible to immediately give the owner of the thing, or person in possession or apparently in possession of the thing, or a person apparently aged 16 years or over and who is apparently employed by or an agent of the owner, a receipt for it, the authorised officer or police officer must within 7 days send

or cause to be sent a receipt for it by post to the address of the owner of the thing last known by the chief executive officer.

S. 104(3) amended by No. 37/2014 s. 10(Sch. item 65.16(c)).

(3) If the authorised officer or police officer is unable to ascertain the identity or the address of the owner of any thing that has been seized, the receipt must be left with, or be posted to, the owner of the premises from which the thing was seized.

(4) A receipt must contain reasonable details of the thing seized.

S. 104(5) amended by Nos 5/1997 s. 18(b), 17/2002 s. 19, 37/2014 s. 10(Sch. item 65.16(c)), 68/2016 s. 100.

(5) An authorised officer or a police officer who seizes a document must also, within 21 days, give or send a copy of the document to the person from whom the document was seized or to a person known by the chief executive officer to be the owner of the document.

S. 104A inserted by No. 69/2004 s. 8.

104A Magistrates' Court may extend 21 day period

S. 104A(1) amended by No. 37/2014 s. 10(Sch. item 65.17(a)).

(1) An authorised officer or police officer may apply to the Magistrates' Court within 21 days after seizing a document for an extension of the 21 day period referred to in section 104(5).

(2) The Court may order such an extension if it is satisfied—

(a) that the seizure of the document was reasonable; and

(b) that the granting of the extension would not unreasonably prejudice, or cause unreasonable hardship to, the person from whom the document was seized; and

(c) that it is in the public interest to grant the extension.

(3) The Court may adjourn an application to enable notice of the application to be given to any person.

S. 104A(4) amended by No. 37/2014 s. 10(Sch. item 65.17(b)).

(4) If an application is made under subsection (1), it is not necessary for the authorised officer or police officer to give or send a copy of the document under section 104(5) until the day after the Court refuses the application or the application is withdrawn or abandoned, or until the day specified by the Court, as the case may be.

105 Powers of seizure

S. 105(1) amended by No. 37/2014 s. 10(Sch. item 65.18).

(1) For preventing the commission, repetition or continuation of an offence against this Act, the regulations or a fisheries notice, any authorised officer or any police officer—

S. 105(1)(a) amended by No. 21/2011 s. 4.

(a) may seize any fishing equipment the possession, sale or use of which is prohibited under this Act, the regulations or a fisheries notice in any particular case; or

S. 105(1)(b) amended by No. 5/1997 s. 50(1)(p).

(b) may at any time with or without warrant seize any fish, protected aquatic biota or noxious aquatic species taken or reasonably suspected to have been taken by any person or in the possession or under the control of any person contrary to this Act, the regulations or a fisheries notice.

S. 105(2) amended by Nos 69/2004 s. 6(4), 37/2014 s. 10(Sch. item 65.18).

(2) An authorised officer or police officer may seize any thing (including boats, trailers, aircraft, motor vehicles, non-motorised vehicles, communications equipment, viewing or scanning devices, fishing equipment, diving equipment, processing equipment, fish, tools, electronic equipment, office equipment, provisions, materials, protected aquatic biota, noxious aquatic species, and documents) that is being used by, or that is in the possession of, a person who has just committed or is reasonably suspected of having committed, is

committing or appears to be just about to commit, an offence against this Act, the regulations or a fisheries notice.

S. 105(3) amended by No. 37/2014 s. 10(Sch. item 65.18).

(3) Subsections (1) and (2) extend to any case where a person is found behaving or acting in such a manner or under such circumstances that the authorised officer or police officer believes on reasonable grounds, without having observed the commission of an offence against this Act, the regulations or a fisheries notice, that the person found has committed such an offence.

S. 106 (Heading) inserted by No. 35/2009 s. 66(1).

106 Forfeiture or return of things seized or retained

S. 106(1) amended by Nos 69/2004 s. 9(1), 21/2011 s. 5(1).

(1) If any fishing equipment seized is equipment the possession, sale or use of which is prohibited by this Act, the regulations or a fisheries notice, the equipment is forfeited to the Crown.

S. 106(1A) inserted by No. 21/2011 s. 5(2).

(1A) If any fish, protected aquatic biota or noxious aquatic species seized has been taken or is possessed in contravention of this Act, the regulations or a fisheries notice, the fish, protected aquatic biota or noxious aquatic species is forfeited to the Crown.

S. 106(2) amended by No. 68/2016 s. 101(1).

(2) If any thing seized is not required as evidence in any proceedings, the chief executive officer may authorise the return of the thing on such conditions as the chief executive officer considers appropriate, including a condition that the person give security to the chief executive officer for payment of the value of the thing if it is forfeited.

S. 106(3) amended by No. 68/2016 s. 101(2).

(3) If the thing returned under subsection (2) is forfeited to the Crown, the security given in lieu of the thing is taken to be forfeited to the Crown and must be paid into the Consolidated Fund.

(4) A person must not contravene a condition imposed under subsection (2).

Penalty:50 penalty units.

S. 106(5) amended by Nos 69/2004 s. 9(1), 35/2009 s. 66(2), 68/2009 s. 97(Sch. item 58.2), substituted by No. 21/2011 s. 5(3).

(5) A court finding any offence proven in respect of a thing seized or subject to a retention notice under this Act may order—

(a) in the case of a thing seized, if the thing is not subject to forfeiture to the Crown under subsection (1) or (1A)—

(i) the forfeiture of the thing; or

(ii) the return of the thing to the person found guilty of the offence or the owner of the thing;

(b) in the case of a thing subject to a retention notice, if the thing, had it been seized, would not have been subject to forfeiture to the Crown under subsection (1) or (1A)—

(i) the forfeiture of the thing; or

(ii) the cancellation of the retention notice and return of the thing to the person found guilty of the offence or the owner of the thing.

S. 106(5A) inserted by No. 17/2002 s. 20(1), substituted by No. 69/2004 s. 9(2).

(5A) A court must order the forfeiture of the thing under subsection (5) if the person in respect of whom the court found an offence proven has previously been convicted or found guilty on 2 or more occasions of—

S. 106(5A)(a) amended by No. 40/2019 s. 25(1).

(a) an offence involving priority species under section 36(1), 37(1), 40(1), 67(3), 68A(4B), 68A(5), 68B(1), 111A, 111B, 111C, 114(3), 116(1), 116(2A), 119A, 119B, 130(4), 130A(5) or 130B(6); or

(b) an associated offence in relation to an offence referred to in paragraph (a).

S. 106(6) amended by Nos 17/2002 s. 20(2)(a)(b), 68/2016 s. 101(3).

(6) Subject to subsection (6A), if anything is seized under this Act but proceedings are not commenced against any person for any offence arising out of the circumstances of the seizure within 90 days after the seizure or proceedings are commenced within 90 days after the seizure but are subsequently discontinued, the chief executive officer must order the return of the thing to the owner immediately and must notify the owner in writing accordingly.

S. 106(6A) inserted by No. 17/2002 s. 20(3), substituted by No. 21/2011 s. 5(4). S. 106(6A)(b) amended by No. 40/2019 s. 25(2).

(6A) Subsection (6) does not apply to any thing—

(a) that is subject to forfeiture to the Crown under subsection (1) or (1A); or

(b) the sale, possession or use of which is prohibited by or under this or any other Act.

S. 106(6B) inserted by No. 40/2019 s. 25(3).

(6B) If any thing is seized under this Act but is not returned to the owner because the sale, possession or use of the thing is prohibited under another Act, the thing must be dealt with in accordance with that other Act.

S. 106(7) amended by No. 68/2016 s. 101(3).

(7) If anything is seized under this Act and is not forfeited to the Crown and the reason for its seizure no longer exists, the chief executive officer must take reasonable steps to return the thing to the owner.

S. 106(8) amended by No. 21/2011 s. 5(5).

(8) Any thing forfeited under this section, or seized under this Act and not claimed within 12 months after the seizure, may be destroyed or be sold and the proceeds of sale paid to the Consolidated Fund.

S. 106AA inserted by No. 21/2011 s. 6.

106AA Actions that may be taken in the case of seized things subject to automatic forfeiture

(1) If an authorised officer seizes any thing under this Act, which is subject to forfeiture to the Crown under section 106(1) or (1A), any of the following actions may be taken—

(a) the officer may give a disposal notice that complies with section 106AB to the owner of the thing, or the person who had possession, control or custody of the thing, immediately before it was seized;

S. 106AA(1)(b) amended by No. 68/2016 s. 102.

(b) the chief executive officer or an authorised officer may apply under section 106AE to a court for a condemnation order in respect of the thing;

(c) the thing may be disposed of as the Minister directs.

(2) Nothing in this section affects any other power to dispose of a thing under this Act.

Note

Under section 107(1) seized live fish or protected aquatic biota may be returned to their natural habitat by an authorised officer if the officer thinks it appropriate and practicable to do so.

S. 106AB inserted by No. 21/2011 s. 6.

106AB Disposal notice

For the purposes of section 106AA(1)(a), a disposal notice must—

(a) describe the thing seized; and

(b) identify the provision of this Act under which the thing was seized and the grounds for the seizure; and

(c) state that—

(i) the thing may be disposed of; and

S. 106AB(c)(ii) amended by No. 68/2016 s. 103.

(ii) the thing will be taken to be condemned as forfeited to the Crown unless the person to whom the notice is given makes a claim in accordance with section 106AC to the chief executive officer for the return of the thing within 28 days after being given the disposal notice; and

S. 106AB(d) amended by No. 68/2016 s. 103.

(d) set out the address of the chief executive officer to which the claim must be sent; and

(e) set out the requirements for making the claim under section 106AC.

S. 106AC (Heading) amended by No. 68/2016 s. 104(1).

106AC Person may claim return of seized thing from chief executive officer

S. 106AC inserted by No. 21/2011 s. 6.

S. 106AC(1) amended by No. 68/2016 s. 104(2).

(1) A person to whom a disposal notice is given may make a claim to the chief executive officer for return of the thing seized and described in the notice.

(2) The claim must—

(a) be made within 28 days after being given the disposal notice; and

(b) be written in English; and

(c) set out an address for service on the person.

S. 106AD inserted by No. 21/2011 s. 6.

106AD Seized thing condemned if not claimed in time

If a person to whom a disposal notice is given does not make a claim in accordance with section 106AC for the return of the thing seized within 28 days after being given the disposal notice, the thing is by virtue of this section taken to be condemned as forfeited to the Crown.

S. 106AE inserted by No. 21/2011 s. 6.

106AE Court may make a condemnation order in respect of thing forfeited to Crown

S. 106AE(1) amended by No. 68/2016 s. 105.

(1) A court may, on the application of the chief executive officer or an authorised officer, and whether or not in connection with any proceeding under this Act, make an order in respect of a thing seized under this Act that is subject to forfeiture to the Crown under section 106(1) or (1A) condemning the thing as forfeited to the Crown (a ***condemnation order***).

(2) The court may adjourn an application to enable notice of the application to be given to any person.

S. 106AF inserted by No. 21/2011 s. 6.

106AF Payment of infringement penalty not to affect certain actions

Any action described in section 106AA in respect of a thing seized may be taken despite the payment of the penalty for any infringement notice served in respect of an offence relating to the seizure of the thing.

S. 106A inserted by No. 17/2002 s. 21.

106A Magistrates' Court may extend 90 day period

S. 106A(1) amended by Nos 69/2004 s. 10, 37/2014 s. 10(Sch. item 65.19).

(1) An authorised officer or police officer may apply to the Magistrates' Court within 90 days after seizing a document or other thing under this Act for an extension of the period for which the authorised officer or police officer may retain the document or thing.

(2) The Magistrates' Court may order such an extension if it is satisfied that retention of the document or other thing is necessary—

(a) for the purposes of an investigation into whether a contravention of this Act, the regulations or a fisheries notice has occurred; or

(b) to enable evidence of a contravention of this Act, the regulations or a fisheries notice to be obtained for the purposes of a proceeding under this Act.

(3) The Magistrates' Court may adjourn an application to enable notice of the application to be given to any person.

107 Disposal of live fish or perishable things

(1) If any live fish or protected aquatic biota are seized under this Act, an authorised officer may return the fish or protected aquatic biota to their natural habitat if the authorised officer considers it appropriate and practicable to do so.

(2) At any time after any fish or other perishable things are seized under this Act, an authorised officer may return the fish or other perishable things to the owner in accordance with section 106(6) or sell the fish or other perishable things.

(3) If any fish or other perishable things seized under this Act are sold, the proceeds of sale must be—

(a) paid to the Consolidated Fund; and

(b) returned to the owner of the fish or perishable things in accordance with section 106(6) as if the proceeds of sale were the fish or perishable things seized.

(4) If any fish or other perishable things seized under this Act cannot lawfully be sold, the authorised

officer may deal with the fish or other perishable things in any manner he or she considers appropriate.

S. 108 (Heading) inserted by No. 35/2009 s. 67(1).

108 Offence in relation to property seized or retained

S. 108(1) amended by No. 35/2009 s. 67(2).

(1) A person must not dispose of, remove, damage or interfere with anything seized or subject to a retention notice under this Act except in accordance with this Act.

Penalty: 100 penalty units or imprisonment for 6 months or both.

S. 108(2) amended by No. 17/2002 s. 22.

(2) If a court convicts a person of an offence against subsection (1) or finds a person guilty of an offence against subsection (1), the court may in addition to any penalty imposed under that subsection, order the person to pay compensation for any damage or loss caused by the offence to any person.

S. 108A inserted by No. 80/2000 s. 11.

108A Retention notices

S. 108A(1) substituted by No. 69/2004 s. 11(1), amended by No. 37/2014 s. 10(Sch. item 65.20(a)).

(1) This section applies to a thing that an authorised officer or a police officer—

(a) believes on reasonable grounds has been taken or used in contravention of this Act or a corresponding law of another State or a Territory of the Commonwealth; or

(b) is entitled to seize under this Act.

S. 108A(1A) inserted by No. 69/2004 s. 11(1), amended by Nos 37/2014 s. 10(Sch. item 65.20(b)), 68/2016 s. 106(1).

(1A) The authorised officer or police officer may issue the person holding or using the thing with a notice requiring the person to keep the thing in his or her possession and not to sell or dispose of the thing.

S. 108A(2) amended by No. 69/2004 s. 11(2).

(2) A notice under subsection (1A)—

(a) must be in writing; and

(b) must specify the thing to which the notice relates (including in the case of fish, the species and quantity); and

(c) has effect for the period specified in the notice (which must not be more than 90 days from the issue of the notice); and

(d) may be cancelled by the person who issued the notice; and

(e) is subject to any terms and conditions specified in the notice.

S. 108A(3) amended by No. 68/2016 s. 106(2).

(3) If proceedings are commenced within the period specified in the notice against any person in relation to the thing to which the notice relates, the chief executive officer may extend the period for which a notice has effect under subsection (2).

S. 108A(4) amended by No. 68/2016 s. 106(3).

(4) If the chief executive officer extends the period for which a notice has effect, the chief executive officer must, before the expiry of the original extension—

(a) notify the person to whom the notice is issued of the extension; and

(b) specify in the notice the period for which the extension is to have effect.

(5) A person to whom a notice has been issued must comply with the notice.

Penalty: 100 penalty units or 6 months imprisonment or both.

S. 108B inserted by No. 80/2000 s. 11.

108B Evidentiary provisions relating to retention notices

(1) In any proceedings under section 108A, evidence that a thing, specified in a notice under that section as being in the possession of a particular person or as being used by a particular person, is no longer in the possession of that person is evidence, and, in the absence of evidence to the contrary, is proof, that the person has not complied with the notice.

(2) In any proceedings under this Act, the fact that a thing is specified in a notice under section 108A as being in the possession of a particular person or as being used by a particular person is evidence, and, in the absence of evidence to the contrary, is proof, that the thing was in the possession of that person.

S. 109 (Heading) inserted by No. 108/2003 s. 11(1).

109 Power to require name and address

S. 109(1) substituted by No. 108/2003 s. 11(2), amended by No. 37/2014 s. 10(Sch. item 65.21(a)).

(1) This section applies if an authorised officer or a police officer believes on reasonable grounds that a person has committed an offence under this Act.

S. 109(2) substituted by No. 108/2003 s. 11(2), amended by No. 37/2014 s. 10(Sch. item 65.21(b)).

(2) The authorised officer or police officer may demand that the person give details of his or her name and place of residence to the authorised officer or police officer.

(3) A person must not—

S. 109(3)(a) amended by No. 37/2014 s. 10(Sch. item 65.21(c)).

(a) refuse or fail to give his or her name and place of residence upon demand by an authorised officer or police officer; or

(b) give a false name or place of residence.

Penalty:20 penalty units.

S. 109(4) substituted by No. 37/2014 s. 10(Sch. item 65.21(d)).

(4) A person who, on demand by an authorised officer or a police officer, refuses or fails to give his or her name and place of residence or gives a name and place of residence which the authorised officer or police officer reasonably suspects to be false, may be arrested by the authorised officer or police officer without warrant and taken before a bail justice or the Magistrates' Court to be dealt with according to law.

S. 109(5) amended by No. 37/2014 s. 10(Sch. item 65.21(e)).

(5) It is a defence to a prosecution for an offence against subsection (3)(a) if the person charged with the offence proves that the authorised officer or police officer did not inform that person that he or she was required by this Act to give the information.

S. 110 (Heading) inserted by No. 17/2002 s. 23(1).

110 Hot pursuit of persons and boats beyond Victorian waters

S. 110(1) amended by Nos 17/2002 s. 23(2), 37/2014 s. 10(Sch. item 65.22(a)(i)).

(1) An authorised officer or police officer may exercise with respect to a person or boat at a place at sea outside Victorian waters (but not within the territorial sea of another country) a power conferred on an authorised officer or police officer by this Part if—

S. 110(1)(a) amended by No. 37/2014 s. 10(Sch. item 65.22(a)(ii)).

(a) one or more authorised officers or police officers (whether or not including the authorised officer or police officer exercising the power) have pursued the person or boat from a place within those waters to the place; and

S. 110(1)(b) amended by No. 37/2014 s. 10(Sch. item 65.22(a)(i)).

(b) the pursuit was not stopped or interrupted at any time before the authorised officer or police officer concerned arrived at the place for the purpose of exercising the power.

S. 110(2) amended by No. 37/2014 s. 10(Sch. item 65.22(b)).

(2) For the purposes of this section, a pursuit of a person or boat is taken not to have stopped or to have been interrupted only because the authorised officer or officers or police officer or police officers concerned have temporarily lost sight of the person or boat.

(3) A reference in this section to having lost sight of a person or boat includes losing output from a radar or other sensing device.

S. 110A inserted by No. 80/2000 s. 12, amended by Nos 108/2003 s. 12(a)(b), 69/2004 ss 5(2), 12, repealed by No. 16/2004 s. 48.

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111 Offences with respect to authorised officers

S. 111(1) amended by No. 30/2021 s. 88(1)(c).

(1) A person must not—

(a) except with the authority of an authorised officer or an order of a court—

(i) remove, alter or interfere in any way with any sample procured under this Act; or

(ii) erase, alter, open, break or remove a mark, seal or fastening placed by an authorised officer on any part of a

sample other than the part left with the person from whom the sample was taken; or

(b) refuse to sell to an authorised officer any fish or to allow an authorised officer to take any sample under this Act; or

S. 111(1)(c) amended by No. 30/2021 s. 88(1)(a).

(c) abuse or insult any person (other than an authorised officer) in the exercise or performance of any power, authority, function or duty under this Act; or

Note to s. 111(1)(c) inserted by No. 30/2021 s. 88(1)(b).

Note

It is an offence under section 45B of the **Victorian Fisheries Authority Act 2016** to abuse or insult an authorised officer in the exercise or performance of any power, authority, function or duty under this Act.

(d) impersonate an authorised officer in the performance of duties or the exercise of powers under this Act; or

S. 111(1)(e) amended by Nos 17/2002 s. 24, 40/2019 s. 26(1).

(e) without reasonable cause fail or refuse to comply with a requirement under section 102 (other than subsection (6D) of that section) or 102A; or

(f) give any information or answer upon a requirement or direction under section 102 knowing it to be false or misleading; or

(g) refuse permission to an authorised officer and any person accompanying an authorised officer under section 102 or 103; or

(h) refuse or neglect to render assistance when required to do so under section 102 or 103; or

S. 111(1)(i) amended by No. 40/2019 s. 26(2).

(i) contravene or fail to comply with any lawful requirement (including a requirement under section 102(6D)), direction or order of an authorised officer.

Penalty:60 penalty units.

S. 111(2) amended by Nos 108/2003 s. 13, 21/2011 s. 7, 30/2021 s. 88(2)(a).

(2) A person must not assault, obstruct, hinder, resist, threaten, intimidate or attempt to obstruct or intimidate any person (other than an authorised officer) in the exercise or performance of any power, authority, function or duty under this Act.

Penalty: 120 penalty units or 12 months imprisonment or both.

Note to s. 111(2) inserted by No. 30/2021 s. 88(2)(b).

Note

It is an offence under section 45A of the **Victorian Fisheries Authority Act 2016** to assault, obstruct, hinder, resist, threaten, intimidate or attempt to obstruct or intimidate an authorised officer in the exercise or performance of any power, authority, function or duty under this Act.

Pt 7 Div. 1A (Heading and ss 111A–111C) inserted by No. 108/2003 s. 5.

Division 1A—Indictable offences

S. 111A inserted by No. 108/2003 s. 5.

111A Offence to traffick in a commercial quantity of a priority species

(1) A person must not traffick in a commercial quantity of a priority species unless he or she is authorised to do so under this Act.

(2) A person who contravenes subsection (1) is guilty of an indictable offence and is liable to a penalty not exceeding level 5 imprisonment (10 years maximum).

(3) Without limiting subsection (1), a reference to ***traffick*** in this section includes—

(a) preparing a priority species for trafficking;

(b) processing a priority species;

(c) selling a priority species;

(d) taking a priority species for sale;

(e) receiving a priority species.

S. 111B inserted by No. 108/2003 s. 5.

111B Offence to take a commercial quantity of a priority species within 24 hours

(1) A person must not, within any 24 hour period, take a commercial quantity of a priority species unless he or she is authorised to do so under this Act.

(2) A person who contravenes subsection (1) is guilty of an indictable offence and is liable to a penalty not exceeding level 6 imprisonment (5 years maximum).

S. 111C inserted by No. 108/2003 s. 5.

111C Offence to possess a commercial quantity of a priority species

(1) A person must not possess a commercial quantity of a priority species unless he or she is authorised to do so under this Act.

(2) A person who contravenes subsection (1) is guilty of an indictable offence and is liable to a penalty not exceeding level 6 imprisonment (5 years maximum).

Pt 7 Div. 2 (Heading) amended by Nos 108/2003 s. 6, 69/2004 s. 13.

Division 2—Other general offences

S. 112 substituted by No. 5/1997 s. 19.

112 Use of explosives, poisons, substances or equipment for fishing

(1) Unless authorised under this Act or under any other Act, a person must not use, or attempt to use, any explosive in Victorian waters.

Penalty: 100 penalty units or imprisonment for 6 months or both.

(2) Unless authorised under this Act or under any other Act, a person must not use, or attempt to use, any poison, substance or equipment in Victorian waters if the use of the poison, substance or equipment can reasonably be expected to result in—

(a) the taking or killing of any fish, fishing bait or protected aquatic biota; or

(b) damage to the habitat of any fish, fishing bait or protected aquatic biota.

Penalty: 100 penalty units or imprisonment for 6 months or both.

(3) If a court finds a person guilty of an offence against this section, the court may, in addition to any other penalty imposed by it, order the person to pay compensation for any damage or loss caused by the offence to any person.

(4) In this section ***poison*** has the same meaning as it has in the **Drugs, Poisons and Controlled Substances Act 1981**.

113 Interference with lawful fishing activities or aquaculture activities

(1) A person must not, without reasonable excuse—

(a) prevent a person from lawfully fishing or using prescribed commercial aquaculture equipment; or

(b) hinder a person who is lawfully fishing or using prescribed commercial aquaculture equipment; or

(c) place or leave anything in Victorian waters that obstructs the lawful use of fishing equipment or prescribed commercial aquaculture equipment.

Penalty: 50 penalty units or imprisonment for 3 months or both.

S. 113(2) amended by No. 17/2002 s. 25.

(2) If a court convicts a person of an offence against subsection (1) or finds a person guilty of an offence against subsection (1), the court may, in addition to any penalty imposed under that subsection, order the person to pay compensation for any damage or loss caused by the offence to any person.

S. 114 substituted by No. 5/1997 s. 20.

114 Prohibition on possession, sale or use of boats and equipment

(1) A regulation or fisheries notice may prohibit the possession, sale or use of any specified boats or equipment.

(2) A prohibition under subsection (1)—

(a) may be absolute or conditional;

(b) may apply in respect of any specified species of fish or fishing bait;

(c) may apply to any waters or to specified waters or areas;

(d) may apply for such period as is specified including—

(i) specified times of the day;

(ii) specified periods of a week, month or year;

(iii) specified periods of more than a year;

(e) may apply in respect of specified classes of fishery licences;

(f) may apply either generally or in specified circumstances or to specified people or classes of people.

(3) A person must not contravene a prohibition under subsection (1).

Penalty: 100 penalty units or imprisonment for 6 months or both.

S. 115 amended by No. 5/1997 s. 21.

115 Unlawful interference with commercial fishing equipment or aquaculture equipment

A person must not—

S. 115(a) amended by No. 5/1997 s. 21.

(a) remove fish from any commercial fishing equipment or commercial aquaculture equipment; or

S. 115(b) amended by No. 5/1997 s. 21.

(b) remove, damage or interfere with any commercial fishing equipment or commercial aquaculture equipment—

unless the person is the owner of the commercial fishing equipment or commercial aquaculture equipment or is acting with the authority of the owner or has some other lawful excuse.

Penalty: 50 penalty units or imprisonment for 3 months or both.

116 Sale of fish taken in contravention of this Act or corresponding law

S. 116(1) amended by No. 35/2009 s. 68(1).

(1) A person must not possess or sell any fish taken or otherwise dealt with in contravention of this Act or a law of the Commonwealth or of another State or of a Territory that corresponds to this Act.

Penalty: 100 penalty units or imprisonment for 6 months or both.

S. 116(2) amended by No. 35/2009 s. 68(1).

(2) It is a defence in proceedings for an offence against subsection (1) if the person charged proves that at the time of the alleged offence the person did not know, and could not reasonably be expected to have known, that the fish had been taken or otherwise dealt with in contravention of this Act or a corresponding Act.

S. 116(2A) inserted by No. 40/2019 s. 27(1).

(2A) A person must not hide or conceal any fish taken or otherwise dealt with in contravention of this Act or a law of the Commonwealth or of another State or of a Territory that corresponds to this Act.

Penalty: 100 penalty units or imprisonment for 6 months or both.

S. 116(3) inserted by No. 35/2009 s. 68(2), amended by No. 40/2019 s. 27(2).

(3) In this section ***otherwise dealt with*** in relation to fish includes any of the following—

(a) the hatching, rearing, breeding, displaying or growing of fish;

(b) the stocking of fish into waters;

(c) the receiving or possession of fish;

(d) the transportation of fish;

(e) the processing of fish;

(f) the sale or any other form of disposal of fish.

117 Use of foreign boat for fishing

(1) A person must not in Victorian waters—

(a) use a foreign boat for fishing; or

(b) use a foreign boat for processing, storing or carrying fish that have been taken by the use of that boat or another boat.

Penalty: 400 penalty units or imprisonment for 2 years or both.

(2) It is a defence in proceedings for an offence against subsection (1) if the person charged proves that he or she was authorised by law to conduct the relevant activity.

118 Having foreign boat equipped with commercial fishing equipment

(1) A person must not in Victorian waters have in the person's possession or in the person's charge a foreign boat equipped with commercial fishing equipment.

Penalty: 100 penalty units or imprisonment for 6 months or both.

(2) It is a defence to proceedings for an offence against subsection (1) if the person charged proves that—

(a) he or she was authorised by law to conduct the relevant activity; or

(b) the boat's commercial fishing equipment was stored and secured and the boat was travelling by the shortest practicable route—

(i) to or from a port in Victoria; or

(ii) from a point outside Victorian waters to another point outside those waters.

S. 118A inserted by No. 69/2004 s. 14.

118A Abalone only to be sold in properly labelled packaging

A person must not sell any abalone unless the abalone is packaged and the packaging is marked or labelled in accordance with regulations made for the purposes of this section.

Penalty: 60 penalty units.

S. 118B inserted by No. 69/2004 s. 14.

118B Abalone packaging not to be disturbed

(1) A person must not remove, destroy or render wholly or partially illegible any mark or label on

any packaging containing abalone if that mark or label has been placed on the packaging in accordance with the regulations.

Penalty:60 penalty units.

(2) A person must not deface, damage or destroy any packaging containing abalone.

Penalty:60 penalty units.

(3) Subsections (1) and (2) do not apply to a person who does anything prohibited by those subsections—

(a) at a place for the purposes of enabling the abalone to be consumed at that place; or

S. 118B(3)(b) amended by No. 68/2016 s. 107.

(b) with the authority of the Victorian Fisheries Authority.

119 Passage of fish not to be blocked

(1) A person must not, except as permitted by or under this or any other Act, set a net, netting or other material or otherwise create an obstruction across or within a bay, inlet, river or creek or across or around an inter-tidal flat so that—

(a) fish will or could be blocked and left stranded; or

(b) immature fish will or could be destroyed; or

(c) the free passage of fish will or could be obstructed.

Penalty:100 penalty units.

S. 119(2) amended by No. 5/1997 s. 22.

(2) A court finding a person guilty of an offence under this section may order the person to remove, within a specified period, the obstruction involved in the commission of the offence.

S. 119(3) amended by No. 68/2016 s. 108.

(3) If such an order is not complied with within the specified period, the Victorian Fisheries Authority—

(a) may cause the obstruction concerned to be removed; and

(b) may, by proceedings brought in a court of competent jurisdiction, recover the cost of removal as a debt from the person against whom the order was made.

S. 119A (Heading) amended by No. 69/2004 s. 15(a), substituted by No. 21/2011 s. 8(1).

S. 119A inserted by No. 108/2003 s. 7, amended by Nos 69/2004 s. 15(b), 21/2011 s. 8(2)(a).

119A Offence to knowingly make or furnish false or misleading statements or documents

A person must not, in making, keeping or furnishing any record, return, account or any other information or document under this Act—

S. 119A(a) amended by No. 21/2011 s. 8(2)(b).

(a) make a statement or furnish a document that he or she knows is false or misleading in a material detail; or

S. 119A(b) amended by No. 21/2011 s. 8(2)(c).

(b) fail to include any material matter in the record, return, account or information or other document with the knowledge that the failure will cause the record, return, account or information or other document to be false or misleading.

Penalty: Level 7 imprisonment (2 years maximum), a fine of 240 penalty units or both.

S. 119B inserted by No. 108/2003 s. 7.

119B Offence to make false or misleading statements

A person must not, in making, keeping or furnishing any record, return, account or any other information under this Act—

(a) make a statement that is false or misleading in a material detail; or

(b) fail to include any material matter in the record, return, account or information where the failure causes the record, return, account or information to be false or misleading.

Penalty:60 penalty units.

120 Liability for offences

S. 120(1) amended by No. 5/1997 s. 23(a).

(1) If a person, employs or gives instructions to, or enters into a contract with, the holder of a fishery licence (other than a recreational fishery licence) or the person in charge of a boat which results in the commission of an offence against this Act, that person is also guilty of the offence.

(2) If an offence against this Act is committed from or in connection with a boat, the relevant access licence holder or if there is no such access licence holder the person in charge of the boat at the time that the offence is committed is also guilty of the offence.

(3) If a corporation is guilty of an offence under this Act, any nominee of the corporation specified on the relevant licence is also guilty of the offence.

S. 120(4) substituted by No. 5/1997 s. 23(b).

(4) Subsections (1), (2) and (3) do not apply if the person, relevant access licence holder or nominee (as the case may be) can prove—

(a) that he or she did everything that was reasonably practicable to ensure that the offence would not be committed; and

S. 120(4)(b) amended by No. 74/2000 s. 3(Sch. 1 item 49.2), substituted by No. 40/2019 s. 28.

(b) that the person, relevant access licence holder or nominee (as they case may be) did

not in any way assist, encourage or direct the commission of the offence.

Pt 7 Div. 2A (Heading and ss 120A–120C) inserted by No. 69/2004 s. 16.

Division 2A—Offences concerning records and the keeping of information

S. 120A (Heading) amended by No. 68/2016 s. 109(1).

S. 120A inserted by No. 69/2004 s. 16.

120A Chief executive officer may require details of fish etc. taken or received

S. 120A(1) amended by No. 68/2016 s. 109(2).

(1) The chief executive officer may, by written notice, require a person to give to the chief executive officer, or to some other person or officer specified by the chief executive officer, the following details in writing—

(a) whether the person, either as principal or agent, took, produced or consigned fish, protected aquatic biota or noxious aquatic species in any specified period and, if so—

(i) the quantity of fish, protected aquatic biota or noxious aquatic species taken, produced or consigned in that period;

(ii) the number of people who were engaged or employed in taking, producing or consigning those fish, protected aquatic biota or noxious aquatic species and the number of hours

those people were engaged or employed in carrying out those activities;

(iii) the name and address of each of those people;

(iv) the equipment and methods used to take or produce those fish, protected aquatic biota or noxious aquatic species;

(v) the name and address of each person to whom those fish, protected aquatic biota or noxious aquatic species were consigned, transported or delivered;

(vi) the address of the premises to which those fish, protected aquatic biota or noxious aquatic species were consigned, transported or delivered;

(b) whether the person, either as principal or agent, received fish, protected aquatic biota or noxious aquatic species in any specified period, and, if so—

(i) the quantity of those fish, protected aquatic biota or noxious aquatic species received by him or her; and

(ii) the name and address of each person who consigned, transported or delivered those fish, protected aquatic biota or noxious aquatic species.

S. 120A(2) amended by No. 68/2016 s. 109(3).

(2) In imposing a requirement under subsection (1), the chief executive officer—

(a) must specify a date by which the requirement must be complied with; and

(b) may also require that the person support any details given with a statutory declaration attesting to the truth of the details.

S. 120A(3) amended by No. 68/2016 s. 109(3).

(3) In specifying a date for the purposes of subsection (2)(a), the chief executive officer must allow a reasonable time for the requirement to be complied with.

(4) A person who is given a notice under subsection (1) must comply with the requirements of the notice by the date specified in the notice.

Penalty:60 penalty units.

S. 120A(5) amended by No. 68/2016 s. 109(4).

(5) If a person who fails to comply with a notice under subsection (1) is the holder of a licence or permit under this Act, the Victorian Fisheries Authority may suspend or refuse to renew or transfer the licence or permit until the person—

(a) has complied with the requirements of the notice; or

S. 120A(5)(b) amended by No. 68/2016 s. 109(4).

(b) satisfies the Victorian Fisheries Authority that he or she has taken, or is taking, all reasonable steps to do so.

S. 120AA inserted by No. 69/2004 s. 18.

120AA Documents detailing sale of certain fish to be created

(1) This section applies to a person who intends to sell fish of a species specified by the regulations for the purposes of this section in a quantity specified by the regulations in respect of that species.

(2) The person—

(a) must, before selling the fish, create a document concerning the proposed sale in the form required by the regulations that contains the details required by the regulations; and

(b) in the case of a sale of the fish by consignment, must ensure that a copy of the document accompanies the consignment; and

(c) in the case of any other sale, must ensure that a copy of the document is given to the purchaser at or before the sale; and

(d) must keep a copy of the document.

Note

Section 120B requires that a document of the sort referred to in this subsection must be kept for at least 3 years after its creation.

Penalty:60 penalty units.

S. 120AA(3) amended by No. 37/2014 s. 10(Sch. item 65.23).

(3) If asked to do so by an authorised officer or a police officer, the person must produce for inspection any document the person has created under this section that is in his or her possession.

Penalty:60 penalty units.

S. 120AB inserted by No. 69/2004 s. 18.

120AB Documents detailing receipt of certain fish to be obtained

(1) This section applies to a person who buys fish of a species specified by the regulations for the purposes of section 120AA in a quantity specified by the regulations for the purposes of this section in respect of that species.

(2) The person must ensure that he or she—

(a) obtains, on receiving the fish, a copy of the document that the seller of the fish was required to create by section 120AA; and

(b) keeps the copy of the document.

Note

Section 120B requires that a document of the sort referred to in this subsection must be kept for at least 3 years after its creation.

Penalty:60 penalty units.

S. 120AB(3) amended by No. 37/2014 s. 10(Sch. item 65.23).

(3) If asked to do so by an authorised officer or a police officer, the person must produce for inspection any document the person has obtained under this section that is in his or her possession.

Penalty:60 penalty units.

S. 120AC inserted by No. 69/2004 s. 18.

120AC Possessor of certain quantities of fish to produce document concerning possession

(1) This section applies to a person—

(a) who possesses fish of a particular species in a quantity specified by the regulations for the purposes of this section in respect of that species; and

(b) who is required by the regulations to have in his or her possession a document specified by the regulations relating to those fish.

(2) The person must have the document in his or her possession as required by the regulations.

Penalty:60 penalty units.

S. 120AC(3) amended by No. 37/2014 s. 10(Sch. item 65.23).

(3) If asked to do so by an authorised officer or a police officer, the person must produce for inspection any document the person has in his or her possession in relation to those fish.

Penalty:60 penalty units.

(4) In the case of a person who is not a person who carries on the business of selling, receiving or processing fish or fish products, it is a defence to a charge under subsection (2) if the person can prove that the fish were in his or her possession otherwise than for the purposes of sale, processing for reward, transportation for reward or storage for reward.

S. 120B inserted by No. 69/2004 s. 16, substituted by No. 35/2009 s. 69.

120B Documents to be kept for 3 years

A person must keep any document that he or she is required to keep under this Act for at least

3 years after—

(a) in the case of a document containing multiple entries, the date on which he or she inserts the last entry; and

(b) in any other case, he or she creates, issues or receives (as the case may be) the document.

Penalty:60 penalty units.

S. 120C inserted by No. 69/2004 s. 16.

120C Writing to be legible, visible and in English

(1) This section applies if a person is required under this Act—

(a) to record information; or

(b) to write or mark details in the form of words on any thing, regardless of how that requirement is expressed.

(2) The person must ensure that the record of the information or the writing or mark—

(a) is legible and is large enough to be easily read; and

(b) in the case of writing or a mark on a thing other than a document, is readily visible to a person handling the thing; and

(c) is in English.

Penalty:60 penalty units.

(3) Nothing in subsection (2) is intended to preclude the person from also using a language other than English in the record or on the thing.

Division 3—Proceedings and evidentiary

121 Service

(1) Where under this Act any notice or order is required to be given to or served on the occupier

of any premises the notice or order may be addressed to the occupier without further name or description and may be given or served by—

(a) leaving it with a person on the premises who is apparently at least 16 years old; or

(b) sending it by post to the occupier at the address of the premises; or

(c) fixing the notice or order or a copy of the notice or order on a conspicuous part of the premises.

(2) Where under this Act any notice or order is required to be given to or served on a person, it may be given or served by—

(a) giving it or serving it personally on the person; or

(b) leaving it at or sending it by post to the person at that person's usual or last known residential or business address.

(3) Any notice or order served for the purposes of this Act on an owner of any premises is if due service has been made on an owner binding on all persons claiming by, from or under, such owner and on all subsequent owners to the same extent as if the notice or order has been served on each of them.

S. 121(4) amended by No. 44/2001 s. 3(Sch. item 46).

(4) The provisions of this section are in addition to and not in derogation from the provisions of the Corporations Act.

122 Evidentiary and onus of proof provisions

S. 122(1) amended by No. 5/1997 s. 24(1)(a).

(1) In any proceedings for an offence under this Act —

(a) the onus of proof that fish was not received, processed or sold by the person, is on the person charged with the offence;

(b) any fish found in, on or attached to any boat, premises, aircraft or vehicle used for the taking, sale, receiving or processing for sale of fish is presumed until the contrary is proved, to be intended for sale for human consumption;

(c) any unprocessed fish found in the possession of any person during a closed season for that type of fish is presumed until the contrary is proved to have been taken by the person during the closed season;

S. 122(1)(d) repealed by No. 108/2003 s. 50(d).

* * * * *

(e) the claim that a boat is a foreign boat is to be taken to be proved unless the contrary is proved;

(f) the production of a copy of the Government Gazette containing any matters required by this Act to be published in the Government Gazette is conclusive evidence of the matters specified therein;

S. 122(1)(g) amended by Nos 5/1997 s. 24(1)(b), 56/2003 s. 4, 68/2016 s. 110.

(g) the production of a certificate purporting to be signed by the chief executive officer stating that any incorporated document or any amendment to an incorporated document was available for inspection is evidence of the facts stated in the absence of evidence to the contrary.

S. 122(2) amended by No. 5/1997 s. 24(1)(a).

(2) In any proceedings for an offence under this Act with respect to any fish alleged to have been taken from Victorian waters, it is upon the person charged to prove that the fish were not taken in Victorian waters.

S. 122(3) amended by No. 5/1997 s. 24(1)(c).

(3) A person who is in a boat, aircraft, car or other vehicle, or on any premises, in or on which there is fish of a priority species is deemed to be in possession of those fish until the contrary is proved.

S. 122(4) inserted by No. 108/2003 s. 15, repealed by No. 68/2009 s. 97(Sch. item 58.3).

* * * * *

Note to s. 122(4) repealed by No. 68/2009 s. 97(Sch. item 58.3).

* * * * *

123 Simplification of proof

(1) Any person having in a boat, any fish and commercial fishing equipment is deemed, until the contrary is proved, to have taken the fish by the use of that commercial fishing equipment and to have taken those fish for sale.

(2) Any person having in a boat any abalone and commercial abalone equipment is deemed, until the contrary is proved, to have taken the abalone by the use of that commercial abalone equipment and to have taken those abalone for sale.

S. 123(3) amended by No. 5/1997 s. 24(2)(a).

(3) If the taking of a particular species of fish from Victorian waters is prohibited by the regulations or a fisheries notice, any person proved to have a fish of that species in his or her possession on, in or in proximity to Victorian waters is deemed, until the contrary is proved, to have taken that fish from those Victorian waters.

S. 123(4) amended by No. 5/1997 s. 24(2)(a)(b).

(4) A certificate signed or appearing to be signed by an authorised officer to the effect that any fish, protected aquatic biota or noxious aquatic species described in the certificate is of a species stated in the certificate is evidence and, in the absence of evidence to the contrary, is proof of the facts stated in the certificate.

S. 123(5) amended by No. 5/1997 s. 24(2)(a).

(5) If a minimum permissible measure is fixed under the regulations or a fisheries notice in respect of fish of any species, any person proved to have any undersized fish of that species in his or her possession in proximity to any Victorian waters is deemed, until the contrary is proved, to have taken that fish from those Victorian waters.

(6) If the use in any Victorian waters of any particular class or kind of fishing equipment is prohibited by the regulations or a fisheries notice, any person proved to have in his or her possession fish and any prohibited fishing equipment in proximity to those waters is deemed, until the contrary is proved, to have used that equipment to take those fish.

(7) If the use in any Victorian waters of any particular class or kind of fishing equipment is prohibited by the regulations or a fisheries notice, any person proved to have any of such equipment in his or her possession in proximity to those waters is deemed, until the contrary is proved, to have used that equipment in those waters.

S. 123(8) amended by Nos 5/1997 s. 24(2)(c), 56/2003 s. 4, 68/2016 s. 111.

(8) If a licence holder is required under this Act to send a document or to provide information to the chief executive officer, whether by post, facsimile or other means, a statement in writing purporting to be signed by the chief executive officer that he or she did not receive the document or information is evidence until the contrary is

proved, that the document or information was not sent.

S. 123(9) inserted by No. 5/1997 s. 24(3).

(9) A certificate signed or appearing to be signed by an authorised officer certifying—

(a) that a particular conversion factor is the relevant conversion factor in the relevant circumstances; and

(b) as to the effect of applying that conversion factor to those circumstances—

is evidence, and in the absence of evidence to the contrary, is proof of the facts stated in the certificate.

S. 123(10) inserted by No. 5/1997 s. 24(3).

(10) For the purposes of this section, if a certificate purports to be signed by an authorised officer and there is no evidence to the contrary, it is not necessary to prove—

(a) that the person who signed the certificate is an authorised officer; or

(b) that the signature is the signature of the authorised officer.

S. 123(11) inserted by No. 5/1997 s. 24(3), amended by No. 68/2009 s. 97(Sch. item 58.4).

(11) No evidence to the contrary for the purposes of subsection (10) is admissible unless, at least 7 days before the hearing, the accused gave the informant written notice that he or she intended to challenge the status or identity of the person who purported to sign the certificate.

S. 123A inserted by No. 5/1997 s. 25.

123A Procedure to be followed before certain certificates are evidence

(1) This section applies to any certificate referred to in section 123(4) or (9).

S. 123A(2) amended by No. 68/2009 s. 97(Sch. item 58.5).

(2) Despite section 123, a certificate to which this section applies is not evidence unless a copy of the certificate was served on the accused with the summons, or at least 28 days before the hearing at

which it is sought to tender the certificate as evidence.

S. 123A(3) amended by No. 68/2009 s. 97(Sch. item 58.6).

(3) The accused is not entitled to question the authorised officer in relation to the certificate at a hearing unless the accused, at least 7 days before the hearing, gave the informant and the authorised officer a written notice requiring the authorised officer to attend the hearing.

(4) Service of a copy of the certificate for the purposes of this section may be proved—

(a) in any manner in which service of a summons may be proved; or

(b) if the certificate was served with the summons and proof of service of the summons is by affidavit, by stating in the affidavit that a copy of the certificate was served with the summons.

S. 124 amended by Nos 5/1997 s. 24(4)(a)(d), 56/2003 s. 4, 68/2016 s. 112.

124 Statement to be evidence of authority

A statement in writing purporting to be signed by the chief executive officer to the effect that—

(a) a specified person was given or served with specified documents; or

(b) a specified person was or was not the holder of a licence or permit; or

(c) a specified person failed to produce a licence or permit when requested to do so by an authorised officer; or

S. 124(d) amended by No. 5/1997 s. 24(4)(b).

(d) a licence or permit is subject to specified conditions; or

(e) an exemption has been granted under this Act; or

S. 124(f) amended by No. 5/1997 s. 24(4)(c).

(f) a fisheries notice, notice, Order in Council, declaration, Ministerial direction or management plan has been prepared in accordance with this Act; or

S. 124(g) amended by No. 68/2016 s. 112.

(g) a specified tag, form or other document is or is not in the form approved by the chief executive officer—

is evidence of the facts stated in the statement.

S. 124A inserted by No. 17/2002 s. 26, amended by Nos 56/2003 s. 4, 68/2016 s. 113.

124A Statement to be evidence of certain matters

A statement in writing purporting to be signed by the chief executive officer to the effect that—

(a) on a specified date or during a specified period a person was or was not authorised to do anything under an authorisation, or was or was not exempted from this Act or a specified provision of this Act; or

(b) on a specified date or during a specified period a specified vessel, premises or other thing was or was not the subject of an authorisation or exemption; or

(c) on a specified date or during a specified period a specified authorisation or exemption was cancelled, suspended or for any other specified reason was of no effect;

(d) on a specified date or during a specified period a specified authorisation or exemption was subject to a specified condition; or

S. 124A(e) amended by No. 68/2016 s. 113.

(e) on a specified date or during a specified period the chief executive officer or an authorised officer had been notified by a specified person in accordance with a requirement under this Act, the regulations or a condition in a licence or permit, that a specified person had taken, received,

dispatched or sold a specified quantity, form or type of fish; or

S. 124A(f) amended by No. 68/2016 s. 113.

(f) on a specified date or during a specified period the chief executive officer or an authorised officer had not received a report from a specified person in accordance with a requirement under this Act, the regulations or a condition in a licence or permit; or

S. 124A(g) amended by No. 68/2016 s. 113.

(g) on a specified date or during a specified period the chief executive officer or an authorised officer had received a report from a specified person in accordance with a requirement under this Act, the regulations or a condition in a licence or permit containing the information specified; or

S. 124A(h) amended by No. 68/2016 s. 113.

(h) on a specified date or during a specified period the chief executive officer or an authorised officer had received a return from a specified person in accordance with a requirement under this Act, the regulations or a condition in a licence or permit containing levels of catches of fish or similar statistical information specified—

is evidence of the facts stated in the statement.

125 Evidence of locality

S. 125(1) amended by No. 5/1997 s. 26(1).

(1) Upon any proceedings for an offence under this Act—

S. 125(1)(a) amended by No. 25/2023 s. 7(Sch. 1 item 13).

(a) charts of marine or estuarine waters purporting to be published or compiled by His Majesty's Admiralty, or by, or for the use of, or from information supplied by, any naval forces of His Majesty, are evidence of any matter that is apparent on the charts or of

any distance that may be calculated from the charts;

(b) for the purpose of making calculations any bearing taken by an authorised officer by compass, or any distance, height or depth observed or calculated by an authorised officer by any mechanical, electronic or sonic device or other scientific instrument is evidence of direction, distance, height or depth;

(c) if it is necessary to establish a position on the surface of the Earth, evidence of that position obtained by the use of a prescribed positioning device is proof of that position in the absence of evidence to the contrary.

S. 125(2) substituted by No. 5/1997 s. 26(2).

(2) In any proceedings for an offence under this Act, the statement of an authorised officer that any place, locality or area is a place, locality or area referred to under this Act is evidence that the place, locality or area described is the place, locality or area referred to under this Act.

S. 125(3) amended by Nos 5/1997 s. 26(3), 35/2009 s. 70.

(3) If, for the purposes of this Act, it is necessary to determine the position on the surface of the Earth or a point, line or area, that reference may be determined by reference to the Geocentric Datum of Australia or the Australian Map Grid or by reference to distance and direction from structures, landmarks or other features.

S. 126 substituted by No. 5/1997 s. 27, amended by No. 6/2018 s. 68(Sch. 2 item 56.2).

126 Evidence of consignment

The statement on oath or by affirmation of an authorised officer that any packaging or label, slip, tag or other document on or in any box, container or package of fish consigned, or displayed, for sale is marked with a means of

identifying a person is evidence that that person consigned or displayed those fish for sale.

S. 126A inserted by No. 108/2003 s. 16, amended by No. 6/2018 s. 68(Sch. 2 item 56.2).

126A Evidence of weight or measurement

In any proceedings for an offence against this Act, the statement on oath or by affirmation of an authorised officer as to any weight, quantity or measurement recorded, observed or taken by the officer is evidence that the weight, quantity or measurement was as stated by the officer at the time of the recording, observation or measurement.

S. 126B inserted by No. 108/2003 s. 16, amended by No. 6/2018 s. 68(Sch. 2 item 56.2).

126B Label of can of abalone is evidence of contents

The statement on oath or by affirmation of an authorised officer that a sealed can was labelled with a statement to the effect that the contents of the can contained abalone is evidence that the can contained abalone.

S. 127 amended by No. 108/2003 s. 17 (ILA s. 39B(1)).

127 Time for bringing proceedings

(1) Notwithstanding anything to the contrary in any Act, proceedings for an offence—

(a) which is prescribed for the purposes of this section may be commenced within the period prescribed (not exceeding 3 years) in respect of that offence;

(b) other than an offence to which paragraph (a) applies, may be commenced within the period of 18 months—

after the commission of the alleged offence.

S. 127(2) inserted by No. 108/2003 s. 17.

(2) Subsection (1) does not apply to indictable offences.

Division 4—Additional penalties and remedies

S. 128 substituted by No. 5/1997 s. 28.

128 Additional penalties for licence holders committing offences

S. 128(1) amended by No. 17/2002 s. 27(a).

(1) In addition to any other penalty a court may impose, if the holder of a fishery licence or a permit, or a person acting on his or her behalf, is convicted or found guilty of an offence—

(a) that is a breach of a section specified by the regulations for the purposes of this section; or

(b) that is a breach of a designated licence condition—

the court may suspend the holder's licence or permit for a period of up to 12 months.

(2) A reference to "a person acting on his or her behalf" in subsection (1) only refers to a person who commits a relevant offence in the course of carrying out an activity on behalf of the holder.

S. 128(3) amended by No. 17/2002 s. 27(a).

(3) In addition to any other penalty a court may impose, if the holder of a fishery licence or a permit is convicted or found guilty of an offence set out in subsection (1)(a) or (b) for a second time, the court may suspend the holder's licence or permit for a period of up to 12 months or may cancel the licence or permit.

S. 128(4) amended by No. 17/2002 s. 27(b).

(4) If the court cancels a licence or permit, it must specify a period during which the convicted person or person found guilty is not to be eligible to be granted a new licence or permit.

(5) The Magistrates' Court may, on the application of any person, stay a decision under this section—

S. 128(5)(a) amended by Nos 3/2016 s. 92(1), 1/2022 s. 93.

(a) pending an appeal against the decision to the County Court or, if the decision was made by the Magistrates' Court constituted by the Chief Magistrate who is a dual commission holder, the Court of Appeal; or

(b) to enable fishing equipment to be recovered.

S. 128(6) amended by Nos 17/2002 s. 27(b), 3/2016 s. 9(2), 1/2022 s. 93.

(6) If the Magistrates' Court refuses to stay a decision under this section, the convicted person or person found guilty may appeal against the refusal to the County Court or, if the Magistrates' Court was constituted by the Chief Magistrate who is a dual commission holder, the Court of Appeal.

(7) Regulations made under subsection (1) may not specify an offence under section 66 for the purposes of this section.

S. 128(8) inserted by No. 69/2004 s. 5(3).

(8) A reference to a breach of a section to which subsection (1) applies is to be read as including a reference to the commission of an associated offence in relation to a section to which subsection (1) applies.

S. 128A inserted by No. 108/2003 s. 18.

128A Additional penalty for agents of licence holders

(1) This section applies if—

(a) a court finds a person guilty of an offence against section 53(4); and

(b) regulations have been made for the purposes of this section specifying one or more classes of licence.

(2) In addition to any other penalty the court may impose, the court may prohibit the person from acting for a specified period on behalf of the holder of any licence that is of a class specified by the regulations for the purposes of this section.

(3) In making an order, the court—

(a) may not specify a period under subsection (2) of more than 10 years; and

(b) may impose any other requirement on the person that it considers necessary or expedient to give effect to the order.

S. 129 substituted by No. 5/1997 s. 29, amended by Nos 17/2002 s. 28, 108/2003 s. 20 (ILA s. 39B(1)).

129 Additional penalty—offence by corporation

(1) Despite anything to the contrary in this Act, if a court convicts a corporation of an offence or finds a corporation guilty of an offence—

(a) that is a breach of a section specified by the regulations for the purposes of section 128; or

(b) that is a breach of a designated licence condition—

the court may impose a penalty of up to twice the monetary penalty that otherwise applies in respect of the offence.

S. 129(2) inserted by No. 108/2003 s. 20.

(2) Despite anything to the contrary in this Act or the **Sentencing Act 1991**, if a court convicts a corporation, or finds a corporation guilty, of an indictable offence against this Act, the court may impose a penalty of up to 5 times the monetary penalty that otherwise applies in respect of the offence.

S. 129A inserted by No. 21/2011 s. 9.

129A Court may order offenders to take specified actions

(1) This section applies if a court finds a person guilty of an offence against this Act.

(2) In addition to, or instead of, any other penalty the court may impose on the person under this Act, the court may order the person to carry out a specified project for the restoration or enhancement of the environment in a public place

or for the public benefit (even if the project is unrelated to the offence).

(3) The court may make the order on the application of an authorised officer, or on the court's own motion.

(4) In making an order, the court may specify by when specified actions must be taken and may also impose any other requirement that it considers necessary or expedient to make the order effective.

S. 129A(5) amended by No. 68/2016 s. 114(1).

(5) If a person is found in contempt of court for failing to comply with an order, the chief executive officer may do anything that is necessary or expedient to carry out any action that remains to be done under the order and that it is still practicable to do.

S. 129A(6) amended by No. 68/2016 s. 114(2).

(6) If a person fails to comply with an order made under subsection (2), the chief executive officer may give the person a written notice advising the person that the chief executive officer intends to carry out specified actions that remain to be done under the order unless the person can, within 14 days after being given the notice, satisfy the chief executive officer that the person will carry out those actions within a period of time acceptable to the chief executive officer.

S. 129A(7) amended by No. 68/2016 s. 114(3).

(7) If a person who has been given a notice under subsection (6) fails to give the chief executive officer a satisfactory response within the 14 days, or fails to comply with any undertaking given to the chief executive officer in response to the notice, the chief executive officer may do anything that is necessary or expedient to carry out any action that remains to be done under the order and that it is still practicable to do.

(8) Nothing in subsections (6) and (7) prevents contempt of court proceedings from being commenced or continued against a person who has failed to comply with a court order.

S. 129A(9) amended by No. 68/2016 s. 114(4).

(9) The Victorian Fisheries Authority may recover any cost the Victorian Fisheries Authority incurs in taking action under subsection (5) or (7) as a debt due and payable by the person against whom the order was made.

130 Court may prohibit person from being on boats or certain places

(1) If a court convicts a person of an offence against this Act, the court may on the application of an authorised officer, in addition to any other penalty imposed under this Act, by order prohibit the person from—

(a) being on board boats equipped with specified fishing equipment or any specified boat or class of boat equipped with specified fishing equipment; or

(b) being in or on any place used for aquaculture or processing fish; or

(c) engaging in any fishing activity or any fishing activity of a specified class; or

S. 130(1)(d) substituted by No. 80/2000 s. 13.

(d) being in possession of specified fishing equipment or fish; or

S. 130(1)(e) inserted by No. 80/2000 s. 13, amended by No. 40/2019 s. 29(1).

(e) engaging in any activity authorised by a fishery licence unless the person has installed a vessel monitoring system and complies with the prescribed conditions on the use of the system; or

S. 130(1)(f) inserted by No. 40/2019 s. 29(2).

(f) selling, supplying, processing, receiving or otherwise dealing with fish, protected aquatic biota or noxious aquatic species.

(2) A court must not make an order under subsection (1) unless the court is satisfied that—

(a) the relevant offence is of a serious nature; and

(b) there are reasonable grounds to believe the person is likely to commit further offences against this Act if the order is not made.

S. 130(2)(b) amended by No. 40/2019 s. 29(3).

(3) An order—

(a) may apply generally or at specified times or in specified circumstances;

(b) has effect for such a period as is specified in the order or, if no period is specified, until the order is rescinded;

(c) may be rescinded or varied at any time.

(4) A person must comply with an order under this section.

Penalty: 200 penalty units or imprisonment for 12 months or both.

S. 130AA inserted by No. 21/2011 s. 10.

130AA Court may prohibit persons from recreational fishing

(1) If a court convicts or finds a person guilty of an offence against this Act, the court, in addition to any other penalty imposed under this Act, may by order prohibit the person from engaging in recreational fishing.

(2) If a person is prohibited from recreational fishing under this section—

(a) the person must not take or attempt to take fish from marine waters or inland waters; and

(b) the person must not use or possess recreational fishing equipment in, on or next to Victorian waters; and

(c) if the person is required to hold a recreational fishery licence to engage in the activities set out in paragraphs (a) and (b)—

(i) the person's recreational fishery licence is suspended; and

Note to s. 130AA (2)(c)(i) amended by No. 68/2016 s. 175.

Note

Under section 58A the holder of a licence suspended under this Act must return the licence to the Victorian Fisheries Authority within 14 days after the suspension takes effect. There is a penalty of 10 penalty units for non-compliance.

(ii) the person is disqualified from holding a recreational fishery licence.

(3) An order under this section has effect for the period specified in the order, which must not exceed 12 months.

(4) A person must comply with an order under this section.

Penalty: 100 penalty units or 6 months imprisonment or both.

(5) Subsection (4) does not apply in relation to the prohibitions under subsection (2)(a) or (2)(b) if the person is acting in accordance with a fishery licence (other than a recreational fishery licence) or a permit.

S. 130A inserted by No. 80/2000 s. 14.

130A Further prohibition court order

(1) This section applies if a person has been prohibited under a law of another State or Territory or the Commonwealth from engaging in specified fishing activity or being in the possession of specified fish or fishing equipment.

S. 130A(2) amended by No. 68/2016 s. 115.

(2) A court may, on the application of the chief executive officer, by order prohibit the person from engaging in the specified fishing activity or

being in the possession of the specified fish or fishing equipment.

(3) A court must not make an order under subsection (2) unless—

(a) the application is accompanied by information that justifies the making of the order; and

(b) the court is satisfied that the person is likely to engage in the specified fishing activity or be in the possession of the specified fish or fishing equipment in Victoria.

(4) An order—

(a) may apply generally or at specified times or in specified circumstances;

(b) has effect for such a period as is specified in the order or, if no period is specified, until the order is rescinded;

(c) may be rescinded or varied at any time.

(5) A person must comply with an order under this section.

Penalty: 200 penalty units or imprisonment for 12 months or both.

S. 130B inserted by No. 80/2000 s. 14.

130B Prohibition to be in or on specified waters

(1) This section applies if—

(a) a court convicts a person of an offence against this Act that is punishable by imprisonment; and

(b) the person has been previously convicted, on 2 or more separate occasions, of an offence

against this Act that was punishable by imprisonment.

S. 130B(2) amended by No. 68/2016 s. 116.

(2) In addition to any other penalty the court may impose, the court may, on the application of the chief executive officer, by order prohibit the person from being in or on specified Victorian waters without a lawful purpose.

(3) A court must not make an order under subsection (2) unless—

(a) the application is accompanied by information that justifies the making of the order; and

(b) the court is satisfied that the person is likely to commit further offences in or on the specified waters.

(4) An order—

(a) may apply generally or at specified times or in specified circumstances;

(b) has effect for a specified period of no more than 10 years or, if no period is specified, for no more than 10 years;

(c) may be rescinded or varied at any time.

(5) In specifying the waters to which an order applies, the court must, to the maximum extent that is practicable having regard to the purpose of the order, limit the specification of the waters as much as possible.

(6) A person must comply with an order.

Penalty: 200 penalty units or imprisonment for 12 months or both.

(7) In a prosecution for an offence against subsection (6), it is not necessary for the prosecutor to prove that the person charged was on or in the specified waters without a lawful

purpose—it is sufficient to prove that the person was in or on those waters on the relevant date.

(8) It is a defence to a charge under subsection (6) if the person charged gives, in the opinion of the court, a satisfactory account as to why he or she was on or in the specified waters.

S. 130C inserted by No. 108/2003 s. 21.

130C Contempt of court proceedings if order breached

Nothing in section 130(4), 130A(5) or 130B(6) is intended to prevent the bringing of proceedings for contempt of court against a person who has failed to comply with an order made under section 130, 130A or 130B and who has not had a charge under section 130(4), 130A(5) or 130B(6) in respect of the failure dealt with.

S. 131 substituted by No. 5/1997 s. 30.

131 10 year limit on previous offences by licence holders

(1) This section applies if a court is determining the penalty for an offence under this Act that was committed by a person who held a fishery licence (other than a recreational fishery licence) at the time the offence was committed.

S. 131(2) amended by No. 17/2002 s. 29.

(2) For the purposes of determining whether it may cancel or suspend the licence under this Act, the court must disregard any previous conviction or finding of guilt of the person under—

(a) this Act; or

(b) the **Fisheries Act 1968**; or

(c) a law of the Commonwealth or another State or Territory that corresponds to this Act—

for any offence that occurred more than 10 years before the date of the offence for which the court is determining the penalty.

Pt 7A (Heading and ss 131A–131Z) inserted by No. 16/2004 s. 49 (as amended by Nos 69/2004 s. 60, 87/2005 s. 6).

Part 7A—Controlled operations

Division 1—Introduction

S. 131A inserted by No. 16/2004 s. 49 (as amended by Nos 69/2004 s. 60, 87/2005 s. 6(a)).

131A Definitions

In this Part—

authorised operation means a controlled operation for which an authority is in force;

authority means an authority in force under this Part, and includes any variation of such an authority;

conduct includes any act or omission;

controlled conduct means conduct which, but for section 131L, would constitute a relevant offence;

controlled operation means an operation that—

(a) is conducted, or intended to be conducted, for the purpose of obtaining evidence that may lead to the prosecution of a person for a relevant offence; and

(b) involves, or may involve, controlled conduct;

criminal activity means conduct that involves the commission of a relevant offence by one or more persons;

illicit goods means goods the possession, taking, receiving, buying, selling, consigning,

storing or trafficking of which is a contravention of this Act;

S. 131A def. of *Integrity Oversight Victoria* inserted by No. 31/2024 s. 113(Sch. 1 item 13.1(a)).

Integrity Oversight Victoria has the same meaning as in the **Integrity Oversight Victoria Act 2011**;

S. 131A def. of *law enforcement officer* amended by No. 37/2014 s. 10(Sch. item 65.24).

law enforcement officer means—

(a) an authorised officer; or

(b) a police officer;

participant in an authorised operation means a law enforcement officer who is authorised under an authority to engage in controlled conduct for the purposes of the operation;

principal law enforcement officer for a controlled operation means the law enforcement officer who is responsible for the conduct of the operation;

relevant offence means—

(a) an offence against section 36, 37, 40, 42, 44, 67, 68A, 68B, 76, 111, 111A to 111C, 114, 116, 119A or 119B; or

(aa) an associated offence in relation to any offence listed in paragraph (a); or

(b) an offence against the regulations;

S. 131A def. of *Special Investigations Monitor* repealed by No. 82/2012 s. 100(2).

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S. 131A def. of *suspect* amended by No. 31/2024 s. 113(Sch. 1 item 13.1(b)).

suspect means a person reasonably suspected of having committed or being likely to have committed, or of committing or being likely to be committing, a relevant offence.

S. 131A def. of *Victorian Inspectorate* inserted by No. 82/2012 s. 100(1), amended by No. 64/2013 s. 11(1), repealed by No. 31/2024 s. 113(Sch. 1 item 13.1(c)).

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S. 131B inserted by No. 16/2004 s. 49.

131B Evidentiary matters

(1) Subject to subsection (2), this Part is not intended to limit a discretion that a court has—

(a) to admit or exclude evidence in any proceedings; or

(b) to stay criminal proceedings in the interests of justice.

(2) In determining whether evidence should be admitted or excluded in any proceedings, the fact that the evidence was obtained as a result of a person engaging in criminal activity is to be disregarded if—

(a) the person was a participant acting in the course of an authorised operation; and

(b) the criminal activity was controlled conduct.

Division 2—Authorisation of controlled operations

S. 131C inserted by No. 16/2004 s. 49.

131C Applications for authorities to conduct controlled operations

S. 131C(1) amended by No. 68/2016 s. 117(1).

(1) The proposed principal law enforcement officer for a controlled operation may apply to the chief executive officer for authority to conduct the operation.

(2) An application for authority must—

(a) be in writing signed by the applicant; and

S. 131C(2)(b) amended by No. 68/2016 s. 117(1).

(b) contain sufficient information to enable the chief executive officer to decide whether or not to grant the application; and

(c) state whether or not the proposed operation, or any other controlled operation with respect to the same criminal activity, has been the subject of an earlier application for an authority or variation of an authority and, if so, whether or not the authority was given or variation granted.

S. 131C(3) amended by No. 68/2016 s. 117(2).

(3) The chief executive officer may require the applicant to furnish any additional information concerning the proposed operation that is necessary for the chief executive officer's proper consideration of the application.

S. 131D inserted by No. 16/2004 s. 49, amended by No. 68/2016 s. 118.

131D Determination of applications

After considering an application for authority to conduct a controlled operation, and any additional information furnished under section 131C(3), the chief executive officer—

(a) may authorise the operation by granting the authority, either unconditionally or subject to conditions; or

(b) may refuse the application.

S. 131E inserted by No. 16/2004 s. 49, amended by No. 68/2016 s. 119.

131E Matters to be taken into account

An authority to conduct a controlled operation may not be granted unless the chief executive officer is satisfied on reasonable grounds—

(a) that a relevant offence has been, is being or is likely to be, committed; and

(b) that the nature and extent of the suspected criminal activity are such as to justify the conduct of a controlled operation; and

(c) that any unlawful conduct involved in conducting the operation will be limited to the maximum extent consistent with conducting an effective controlled operation; and

(d) that the operation will be conducted in a way that will minimise the risk of more illicit goods being under the control of persons (other than law enforcement officers) at the end of the operation than are reasonably necessary to enable the officers to achieve the purpose of the controlled operation; and

(e) that the proposed controlled conduct will be capable of being accounted for in a way that will enable the reporting requirements of Division 6 to be complied with; and

(f) that the operation will not be conducted in such a way that a person is likely to be induced to commit an offence that the person would not otherwise have intended to commit; and

(g) that any conduct involved in the operation will not—

(i) seriously endanger the health or safety of any person; or

(ii) cause the death of, or serious injury to, any person; or

(iii) result in unlawful loss of or serious damage to property (other than illicit goods).

S. 131F inserted by No. 16/2004 s. 49.

131F Form of authority

(1) An authority to conduct a controlled operation must—

S. 131F(1)(a) amended by No. 68/2016 s. 120(1).

(a) be in writing signed by the chief executive officer; and

(b) identify the principal law enforcement officer for the operation; and

(c) identify each law enforcement officer who may engage in controlled conduct for the purposes of the operation; and

(d) identify the nature of the controlled conduct that the participants may engage in; and

(e) identify the nature of the criminal activity (including the suspected offences) in respect of which the controlled conduct is to be engaged in; and

(f) identify (to the extent known) any suspect; and

(g) specify the period of validity of the authority (which must be a period not exceeding 3 months); and

(h) specify any conditions to which the conduct of the operation is subject; and

(i) state the date and time when the authority is granted; and

(j) identify (to the extent known)—

(i) the nature and quantity of any illicit goods that will be involved in the operation; and

(ii) the route through which those goods will pass in the course of the operation.

S. 131F(2) amended by No. 68/2016 s. 120(2).

(2) A person is sufficiently identified for the purposes of subsection (1)(b) or (c) if the person is identified—

(a) by an assumed name under which the person is operating; or

(b) by a code name or code number—

so long as the assumed name, code name or code number can be matched to the person's identity by the chief executive officer.

Division 3—Variation and cancellation of authorities

S. 131G inserted by No. 16/2004 s. 49.

131G When can an authority be varied?

S. 131G(1) amended by No. 68/2016 s. 121(1)(a).

(1) The chief executive officer may vary an authority —

S. 131G(1)(a) amended by No. 68/2016 s. 121(1)(b).

(a) at any time on the chief executive officer's own initiative; or

(b) on application under section 131H.

S. 131G(2) amended by No. 68/2016 s. 121(2).

(2) An authority cannot be varied unless the chief executive officer is satisfied on reasonable grounds that the variation will not authorise a significant alteration of the nature of the authorised operation concerned.

S. 131H inserted by No. 16/2004 s. 49.

131H Application for variation of authority

S. 131H(1) amended by No. 68/2016 s. 122(1).

(1) The principal law enforcement officer for an authorised operation, or any other law enforcement officer on behalf of the principal law enforcement officer, may apply to the chief executive officer for a variation of authority for any one or more of the following purposes—

(a) to extend the period of validity of the authority;

(b) to authorise additional or alternative persons to engage in controlled conduct for the purposes of the operation;

(c) to authorise participants in the operation to engage in additional or alternative controlled conduct;

(d) to identify additional suspects (to the extent known).

(2) More than one application for a variation may be made in respect of the same authority, but no single variation may extend the period of validity of an authority for more than 3 months at a time.

(3) An application for a variation of authority must be in writing signed by the applicant.

S. 131H(4) amended by No. 68/2016 s. 122(2).

(4) The chief executive officer may require the applicant to furnish such information concerning the proposed variation as is necessary for the chief executive officer's proper consideration of the application.

S. 131I inserted by No. 16/2004 s. 49.

131I Determination of application to vary authority

S. 131I(1) amended by No. 68/2016 s. 123.

(1) After considering an application for a variation of authority, and any additional information furnished under section 131H(4), the chief executive officer—

(a) may vary the authority in accordance with the application; or

(b) may refuse the application.

(2) Section 131E applies to an application for a variation of authority under this section in the same way as it applies to an application for authority under section 131C.

S. 131J inserted by No. 16/2004 s. 49.

131J Form of variation of authority

A variation of authority must—

S. 131J(a) amended by No. 68/2016 s. 124.

(a) be in writing signed by the chief executive officer; and

(b) identify the authorised operation for which the authority is in force; and

(c) state the date and time when the authority was varied; and

(d) if the authority was varied on an application under section 131H, state the name of the applicant; and

(e) describe the variation having regard, if an application for variation was made, to the purposes referred to in section 131H(1) in respect of which the application was made.

S. 131K inserted by No. 16/2004 s. 49.

131K Cancellation of authorities

S. 131K(1) amended by No. 68/2016 s. 125(1).

(1) The chief executive officer may, by order in writing given to the principal law enforcement officer for an authorised operation, cancel the authority at any time and for any reason.

S. 131K(2) amended by No. 68/2016 s. 125(2).

(2) Without limiting subsection (1), the chief executive officer may cancel an authority for an authorised operation at any time at the request of the principal law enforcement officer for the operation.

(3) Cancellation of an authority for a controlled operation takes effect at the time the order is made or at the later time specified in the order.

Division 4—Effect of authorities

S. 131L inserted by No. 16/2004 s. 49.

131L Effect of authorities

Conduct engaged in by a participant in an authorised operation which, but for this section would constitute a relevant offence, does not have that consequence if the conduct is engaged in in accordance with the authority for the operation.

S. 131M inserted by No. 16/2004 s. 49.

131M Defect in authority

An application for authority or variation of authority, and any authority or variation of authority granted on the basis of such an application, is not invalidated by any defect, other than a defect that affects the application, authority or variation in a material particular.

S. 131N inserted by No. 16/2004 s. 49.

131N Effect of being unaware of variation or cancellation of authority

(1) If an authority for a controlled operation is varied in a way that limits its scope, this Part continues to apply to a participant in the operation as if the

authority had not been varied in that way, for so long as the participant—

(a) is unaware of the variation; and

(b) is not reckless about the existence of the variation.

(2) If an authority for a controlled operation is cancelled, this Part continues to apply to a participant in the operation as if the authority had not been cancelled in that way, for so long as the participant—

(a) is unaware of the cancellation; and

(b) is not reckless about the existence of the cancellation.

(3) For the purposes of this section, a person is reckless about the existence of the variation or cancellation of an authority if—

(a) the person is aware of a substantial risk that the variation or cancellation has happened; and

(b) having regard to the circumstances known to the person, it is unjustifiable to take the risk.

S. 131O inserted by No. 16/2004 s. 49.

131O Protection from criminal responsibility for certain ancillary conduct

S. 131O(1) substituted by No. 40/2019 s. 30.

(1) This section applies to conduct such as involvement in the commission of a relevant offence (***ancillary conduct***) for which a person may be criminally responsible because the conduct involves conduct engaged in by another person that is controlled conduct for which the other person would (but for section 131L) be criminally responsible (the ***related controlled conduct***).

(2) Despite any other Act or law, a person who engages in ancillary conduct that is an offence (whether or not the person is a participant in a controlled operation) is not criminally responsible for the offence if at the time the person engaged in the ancillary conduct he or she believed the related controlled conduct was being engaged in, or would be engaged in, by a participant in an authorised operation.

Division 5—Notification of third parties

131P Notification requirements

S. 131P inserted by No. 16/2004 s. 49.

S. 131P(1) amended by No. 68/2016 s. 126(1).

(1) If any loss of or serious damage to property occurs in the course of or as a direct result of an authorised operation (other than property of the Victorian Fisheries Authority or a participant in the operation), the principal law enforcement officer for the operation must report the loss or damage to the chief executive officer as soon as practicable.

S. 131P(2) amended by No. 68/2016 s. 126(2).

(2) The chief executive officer must take all reasonable steps to notify the owner of the property of the loss or damage.

S. 131P(3) amended by No. 68/2016 s. 126(3).

(3) The chief executive officer is not required to notify the owner of property under this section until the chief executive officer is satisfied that notification would not—

(a) compromise or hinder the authorised operation; or

(b) compromise the identity of a participant in the authorised operation; or

(c) endanger the life or safety of any person; or

(d) prejudice any legal proceeding; or

(e) otherwise be contrary to the public interest.

S. 131P(4) amended by No. 68/2016 s. 126(4).

(4) If any personal injury occurs in the course of or as a direct result of an authorised operation, the principal law enforcement officer for the operation must report the injury to the chief executive officer as soon as practicable.

Division 6—Compliance and monitoring

S. 131Q inserted by No. 16/2004 s. 49.

131Q Unauthorised disclosure of information

(1) A person is guilty of an offence if—

(a) the person intentionally, knowingly or recklessly discloses any information; and

(b) the person knows that, or is reckless as to whether, the information relates to an authorised operation; and

(c) the person knows that, or is reckless as to whether, the disclosure is not made—

(i) in connection with the administration or execution of this Act; or

(ii) for the purposes of any legal proceeding arising out of or otherwise related to this Act or of any report of any such proceedings; or

(iii) in accordance with any requirement imposed by law; or

S. 131Q (1)(c)(iv) amended by Nos 29/2011 s. 3(Sch. 1 item 39.2), 82/2012 s. 101, 37/2014 s. 10(Sch. item 65.25), 60/2014 s. 140(Sch. 3 item 18), 31/2024 s. 113(Sch. 1 item 13.2).

(iv) in accordance with Part 9 of the **Victoria Police Act 2013**, the **Independent Broad-based Anti-corruption Commission Act 2011**, the **Integrity Oversight Victoria Act 2011** or Division 8 or 9 of Part 3 of the **Privacy and Data Protection Act 2014**.

Penalty:Imprisonment for 2 years.

(2) A person is guilty of an offence against this subsection if the person commits an offence against subsection (1) in circumstances in which the person—

(a) intends to endanger the health or safety of any person or prejudice the effective conduct of an authorised operation or a corresponding authorised operation; or

(b) knows that, or is reckless as to whether, the disclosure of the information—

(i) endangers or will endanger the health or safety of any person; or

(ii) prejudices or will prejudice the effective conduct of an authorised operation or a corresponding authorised operation.

Penalty:Imprisonment for 10 years.

(3) An offence against subsection (2) is an indictable offence.

S. 131R inserted by No. 16/2004 s. 49.

131R Principal law enforcement officers' reports

S. 131R(1) amended by No. 68/2016 s. 127.

(1) Within 2 months after the completion of an authorised operation, the principal law enforcement officer for the operation must make a report in accordance with this section to the chief executive officer.

(2) The report must include the following details—

(a) the date and time when the authorised operation began and its duration; and

(b) the nature of the controlled conduct engaged in for the purposes of the operation; and

(c) details of the outcome of the operation; and

(d) if the operation involved illicit goods, a statement (to the extent known) of—

(i) the nature and quantity of the illicit goods; and

(ii) the route through which the illicit goods passed in the course of the operation; and

(e) details of any loss of or serious damage to property, or any personal injuries, occurring in the course of or as a direct result of the operation.

S. 131S (Heading) amended by No. 68/2016 s. 128(1).

S. 131S inserted by No. 16/2004 s. 49 (as amended by No. 87/2005 s. 6(b)).

131S Chief executive officer's reports

S. 131S(1) amended by Nos 7/2010 s. 11, 82/2012 s. 102, 68/2016 s. 128(2), 31/2024 s. 113(Sch. 1 item 13.3(a)).

(1) As soon as practicable, after 30 June and 31 December but no more than 2 months after each date in each year, the chief executive officer must submit a report to Integrity Oversight Victoria and the Secretary setting out the details required by subsection (2) in relation to authorised

operations conducted during the previous 6 months.

(2) The report must include the following details—

S. 131S(2)(a) amended by No. 68/2016 s. 128(3).

(a) the number of authorities that have been granted or varied by the chief executive officer, and the number of applications for the granting or variation of authorities that have been refused by the chief executive officer, during the period to which the report relates; and

(b) the nature of the criminal activities against which the authorised operations were directed; and

(c) the nature of the controlled conduct engaged in for the purposes of the authorised operations; and

(d) if any of the authorised operations involved illicit goods, a statement (to the extent known) of—

(i) the nature and quantity of the illicit goods; and

(ii) the route through which the illicit goods passed in the course of the operations; and

(e) details of any loss of or serious damage to property, or any personal injuries, occurring in the course of or as a direct result of the authorised operations; and

S. 131S(2)(f) amended by No. 68/2016 s. 128(4).

(f) the number of authorities cancelled by the chief executive officer or that have expired during the period to which the report relates.

S. 131S(3) amended by Nos 82/2012 s. 102, 68/2016 s. 128(4), 31/2024 s. 113(Sch. 1 item 13.3(b)).

(3) Integrity Oversight Victoria may require the chief executive officer to furnish additional information covering any authorised operation to which a report relates.

(4) Nothing in subsection (2)(c) or (d) requires particulars of an authorised operation to be included in a report for a period of 6 months if the operation had not been completed during that period, but the particulars must instead be included in the report for the period of 6 months in which the operation is completed.

S. 131T (Heading) amended by Nos 82/2012 s. 103(1), 31/2024 s. 113(Sch. 1 item 13.4).

S. 131T inserted by No. 16/2004 s. 49 (as amended by No. 87/2005 s. 6(b)).

131T Annual report by Integrity Oversight Victoria

S. 131T(1) amended by Nos 7/2010 s. 12, 82/2012 s. 103(2), 68/2016 s. 129(1), 31/2024 s. 113(Sch. 1 item 13.5(a)).

(1) Integrity Oversight Victoria must, as soon as practicable after receipt of the report of the chief executive officer of 30 June in each year, prepare a report of the work and activities of law enforcement officers under this Part for the preceding 12 months and give a copy of the report to the Minister, the Secretary and the chief executive officer.

(2) The report—

S. 131T(2)(a) amended by Nos 82/2012 s. 103(2), 68/2016 s. 129(2), 31/2024 s. 113(Sch. 1 item 13.5(b)).

(a) must include comments on the comprehensiveness and adequacy of the reports which were provided to Integrity Oversight Victoria by the chief executive officer under section 131S; and

(b) must not disclose any information that identifies any suspect or a participant in an operation or that is likely to lead to such a person or participant being identified.

S. 131T(3) amended by Nos 82/2012 s. 103(2), 68/2016 s. 129(3), 31/2024 s. 113(Sch. 1 item 13.5(b)).

(3) The chief executive officer must advise Integrity Oversight Victoria of any information in the report that, in the opinion of the chief executive officer, should be excluded from the report before the report is laid before Parliament because the information, if made public, could reasonably be expected to—

(a) endanger a person's safety; or

(b) prejudice an investigation or prosecution; or

(c) compromise any law enforcement agency's operational activities or methodologies.

S. 131T(4) amended by Nos 82/2012 s. 103(2), 68/2016 s. 129(4), 31/2024 s. 113(Sch. 1 item 13.5(a)).

(4) Integrity Oversight Victoria must exclude information from the report if satisfied on the advice of the chief executive officer of any of the grounds set out in subsection (3).

S. 131T(5) substituted by No. 82/2012 s. 103(3), amended by No. 31/2024 s. 113(Sch. 1 item 13.5(a)).

(5) Integrity Oversight Victoria must transmit the report to each House of Parliament as soon as practicable after the earlier of—

S. 131T(5)(a) amended by Nos 68/2016 s. 129(5)(a), 31/2024 s. 113(Sch. 1 item 13.5(b)).

(a) the day on which Integrity Oversight Victoria received the advice of the chief executive officer under subsection (3);

S. 131T(5)(b) amended by Nos 68/2016 s. 129(5)(b), 31/2024 s. 113(Sch. 1 item 13.5(b)).

(b) 14 days after the day Integrity Oversight Victoria gave the report to the chief

executive officer.

(6) Nothing in this section requires particulars of an authorised operation to be included in a report for a year if the operation had not been completed as at 30 June in that year, but the particulars must instead be included in the report for the year in which the operation is completed.

S. 131T(7) substituted by No. 82/2012 s. 103(4), amended by No. 31/2024 s. 113(Sch. 1 item 13.5(b)).

(7) A report under this section may be combined with a report of Integrity Oversight Victoria under section 39 of the **Crimes (Controlled Operations) Act 2004**.

S. 131U inserted by No. 16/2004 s. 49, amended by No. 68/2016 s. 130.

131U Keeping documents connected with authorised operations

The chief executive officer must cause the following to be kept—

(a) each application for authority; and

(b) each authority; and

(c) each application for variation of authority; and

(d) each variation of authority; and

(e) each order cancelling an authority; and

(f) each report of a principal law enforcement officer under section 131P or 131R.

S. 131V inserted by No. 16/2004 s. 49.

131V General register

S. 131V(1) amended by No. 68/2016 s. 131.

(1) The chief executive officer must cause a general register to be kept.

(2) The general register is to specify—

(a) for each application for authority or for variation of authority—

(i) the date of the application; and

(ii) whether the application was granted, refused or withdrawn; and

(iii) if the application was refused or withdrawn—the date and time of the refusal or withdrawal; and

(b) for each authority—

(i) the date and time the authority was granted; and

(ii) each offence in respect of which controlled conduct under the authority was to be engaged in; and

(iii) the period of validity of the authority; and

(iv) if the authority was cancelled, the date and time of cancellation; and

(v) the date and time the authorised operation began and the date of completion of the operation; and

(vi) the date on which the principal law enforcement officer for the operation made a report on the operation under section 131R; and

(vii) if the authorised operation involved illicit goods, to the extent known—

(A) the nature and quantity of the illicit goods; and

(B) the route through which the illicit goods passed in the course of the operation; and

(viii) details of any loss of or serious damage to property, or any personal injuries, occurring in the course of or as a direct result of the operation; and

(c) for each variation of authority, the date and time the variation was made.

S. 131W (Heading) amended by Nos 82/2012 s. 104(1), 31/2024 s. 113(Sch. 1 item 13.6).

S. 131W inserted by No. 16/2004 s. 49 (as amended by No. 87/2005 s. 6(b)).

131W Inspection of records by Integrity Oversight Victoria

S. 131W(1) amended by Nos 82/2012 s. 104(2), 68/2016 s. 132(1), 31/2024 s. 113(Sch. 1 item 13.7(a)).

(1) Integrity Oversight Victoria must, from time to time and at least once every 12 months, inspect the records of the Victorian Fisheries Authority to determine the extent of compliance with this Part by the chief executive officer and law enforcement officers.

S. 131W(2) amended by Nos 82/2012 s. 104(3), 31/2024 s. 113(Sch. 1 item 13.7(b)).

(2) For the purpose of an inspection under this section, Integrity Oversight Victoria—

S. 131W(2)(a) amended by No. 68/2016 s. 132(2)(a).

(a) after notifying the chief executive officer, may enter at any reasonable time premises

occupied by the Victorian Fisheries Authority; and

S. 131W(2)(b) amended by No. 68/2016 s. 132(2)(b).

(b) is entitled to have full and free access at all reasonable times to all records of the Victorian Fisheries Authority that are relevant to the inspection; and

S. 131W(2)(c) amended by Nos 82/2012 s. 104(3), 68/2016 s. 132(2)(b), 31/2024 s. 113(Sch. 1 item 13.7(b)).

(c) may require a member of staff of the Victorian Fisheries Authority to give Integrity Oversight Victoria any information that Integrity Oversight Victoria considers necessary, being information that is in the member's possession, or to which the member has access, and that is relevant to the inspection.

S. 131W(3) amended by Nos 82/2012 s. 104(4), 68/2016 s. 132(3), 31/2024 s. 113(Sch. 1 item 13.7(b)).

(3) The chief executive officer must ensure that members of staff of the Victorian Fisheries Authority give Integrity Oversight Victoria any assistance Integrity Oversight Victoria reasonably requires to enable Integrity Oversight Victoria to perform functions under this section.

Division 7—General

S. 131X inserted by No. 16/2004 s. 49, amended by No. 68/2016 s. 133.

131X No delegations

Despite any other Act or law to the contrary, the functions or powers of the chief executive officer under this Part may not be delegated to any other person.

S. 131Y inserted by No. 16/2004 s. 49.

131Y Evidence of authorities

A document purporting to be an authority granted under section 131D—

(a) is admissible in any legal proceedings; and

S. 131Y(b) amended by No. 68/2016 s. 134.

(b) in the absence of evidence to the contrary, is proof in any proceedings (not being criminal or disciplinary proceedings against a law enforcement officer) that the chief executive

officer was satisfied of the facts he or she was required to be satisfied of to grant the authority.

S. 131Z inserted by No. 16/2004 s. 49.

131Z Transitional provision

An authority may be given under this Part for a controlled operation in relation to criminal activity occurring before, on or after the commencement of this Part.

Part 8—General

Division 1—Licensing procedures

132 Commercial Fisheries Licensing Panel

(1) Subject to this Act, the Commercial Fisheries Licensing Panel established under section 6C of the **Fisheries Act 1968** is continued in existence in accordance with this Act.

(2) The Commercial Fisheries Licensing Panel consists of such members as are appointed by the Minister being—

(a) a chairperson appointed on the nomination of the Secretary;

(b) another person appointed on the nomination of the Secretary;

S. 132(2)(c) amended by Nos 35/2009 s. 37(1), 35/2019 s. 8(11).

(c) one person associated with and familiar with the fishing industry;

S. 132(2)(d) amended by No. 35/2009 s. 37(2).

(d) a person in respect of each of the several kinds of fishery licences.

(3) The Commercial Fisheries Licensing Panel is to be constituted in relation to any particular application referred by the Secretary by—

(a) the persons referred to in subsections (2)(a), (2)(b) and (2)(c); and

(b) such of the persons referred to in subsection (2)(d) as represent the interests of fishers in each of the fisheries which is concerned with the matter of the application.

(4) The Minister may at any time remove a member of the Commercial Fisheries Licensing Panel and appoint another member in accordance with subsection (2).

(5) A member is appointed for a term not exceeding 3 years as is specified in the instrument of appointment.

(6) A member is eligible for re-appointment.

(7) Subject to this Act, a member holds office on such terms and conditions (including as to payment of allowances and expenses) as are specified in the instrument of appointment.

S. 132(8) amended by No. 46/1998 s. 7(Sch. 1), substituted by Nos 108/2004 s. 117(1) (Sch. 3 item 79.1), 80/2006 s. 26(Sch. item 40.1).

(8) The **Public Administration Act 2004** (other than Part 3 of that Act) applies to a member in respect of the office of member.

(9) Subject to this Act, a member in office immediately before the commencement of this section continues in office for the remainder of his or her term of appointment.

133 Proceedings of Commercial Fisheries Licensing Panel

(1) Subject to subsection (2), meetings of the Commercial Fisheries Licensing Panel are to be held at such times and in such manner as the Panel determines.

(2) The chairperson of the Commercial Fisheries Licensing Panel may fix meetings of the Panel.

(3) Three members of the Commercial Fisheries Licensing Panel constitute a quorum of the Panel.

(4) A matter arising at a meeting of the Commercial Fisheries Licensing Panel must be determined by a majority of the members at the meeting.

(5) If voting is equal, the chairperson has a casting, as well as a deliberative vote.

(6) Subject to this section, the Commercial Fisheries Licensing Panel may regulate its own proceedings.

134 Functions of Commercial Fisheries Licensing Panel

The Functions of the Commercial Fisheries Licensing Panel are to—

S. 134(a) substituted by No. 5/1997 s. 31, amended by No. 68/2016 s. 135.

(a) consider applications relating to the issue, transfer or renewal of fishery licences (other than recreational fishery licences) referred to it by the Victorian Fisheries Authority;

S. 134(b) amended by No. 68/2016 s. 135.

(b) make recommendations in relation to such applications to the Victorian Fisheries Authority.

S. 135 amended by Nos 46/1998 s. 7(Sch. 1), 108/2004 s. 117(1) (Sch. 3 item 79.2), 80/2006 s. 26(Sch. item 40.2), 35/2009 s. 38, repealed by No. 40/2019 s. 31.

* * * * *

S. 136 amended by Nos 5/1997 s. 32, 18/2005 s. 18(Sch. 1 item 44.2), substituted by No. 40/2019 s. 32.

136 Application for review by VCAT

A person who is aggrieved by a reviewable decision within the meaning of section 137 may within 28 days after receiving notice of the

decision apply to VCAT for a review of the decision.

S. 137 substituted by No. 5/1997 s. 33, amended by No. 68/2016 s. 136.

137 Reviewable decisions

For the purposes of section 136, ***reviewable decision*** means a decision—

(a) to refuse to issue a licence under section 51 or renew a licence under section 57;

(b) to refuse to approve the transfer of a fishery licence under section 56;

(c) to vary any licence or permit under section 54(1)(a);

(d) to impose, vary or revoke any condition under section 54(1)(b);

(e) to refuse to issue a general permit under section 49(5);

(f) to refuse to place the name of a person on an access licence for the purposes of section 39(2);

(g) to defer the renewal of a licence under section 57(8);

(h) to suspend or cancel a fishery licence under section 58;

S. 137(ha) inserted by No. 80/2000 s. 15.

(ha) to refuse approval of a transfer of individual quota units under section 65A;

S. 137(hb) inserted by No. 58/2005 s. 8.

(hb) to refuse approval of a transfer of individual abalone quota units under section 66K;

(i) to suspend or refuse to renew or transfer a licence under section 101(3);

(j) which the regulations state is a reviewable decision for the purposes of this section.

* * * * *

S. 138 repealed by No. 5/1997 s. 34.

Division 2—Miscellaneous

S. 138A inserted by No. 35/2009 s. 71.

138A Conferral of powers of authorised officers

A ***fisheries officer*** within the meaning of the Fisheries Management Act 2007 of South Australia may, within South Australia, exercise or perform any power, authority, function or duty that an authorised officer has under Part 7.

139 Fish research stations and hatcheries on Crown land

A person must not take or attempt to take any fish, protected aquatic biota or noxious aquatic species from any research station or hatchery on Crown land without the written permission of the lawful occupier of the land.

Penalty:50 penalty units.

S. 140 (Heading) inserted by No. 68/2016 s. 137(1).

140 Research carried out by Secretary or Victorian Fisheries Authority

S. 140(1) amended by No. 68/2016 s. 137(2).

(1) Subject to the direction and control of the Minister, the Secretary or the Victorian Fisheries Authority may, for the achievement of the objectives of this Act—

(a) carry out or cause to be carried out any experimental, monitoring or research activity or field studies; or

S. 140(1)(b) substituted by No. 5/1997 s. 35(a).

(b) use any commercial fishing equipment, commercial abalone equipment or commercial aquaculture equipment or other device of any kind or any liquid, solid or gaseous matter.

S. 140(2) amended by No. 68/2016 s. 137(2).

(2) Without limiting the generality of subsection (1), the Secretary or the Victorian Fisheries Authority may—

(a) determine the possible effects and influence on fish, aquatic ecosystems and fish habitat of proposed and existing water conservation structures, river improvement work, drainage projects, water conservation projects and any other project which may affect fish environments and aquatic ecosystems;

(b) ascertain the economics of any phase of any fishery;

(c) determine the effects of contamination of the atmosphere, soil and water on aquatic organisms and fish habitat;

(d) ascertain whether fish exist in any waters in commercial quantities;

(e) develop any fishery in any waters;

(f) take fish for examination and study;

(g) destroy fish for the establishment of other fisheries in their stead;

(h) remove fish from any waters;

S. 140(2)(i) substituted by No. 5/1997 s. 35(b).

(i) stock any waters with any species of fish;

(j) do any act matter or thing for the improvement or better management of any fishery or aquatic ecosystem.

S. 141 repealed by No. 5/1997 s. 36, new s. 141 inserted by No. 108/2003 s. 41.

141 Fisheries Plant and Equipment Fund

(1) There is to be established and kept in the Treasury an account called the "Fisheries Plant and Equipment Fund".

S. 141(2) amended by No. 68/2016 s. 138.

(2) There is to be paid into the Fund those amounts that the Victorian Fisheries Authority determines are proper in the circumstances—

(a) to enable the purchase of any plant or equipment required for the purposes of this Act where the use of the plant or equipment for those purposes will extend over more than one financial year; and

(b) to enable the operation, maintenance and repair of that plant or equipment; and

(c) to enable the payment of any other expenses in relation to that plant and equipment.

(3) Any money in the Fund that is not immediately required may be invested in any manner approved by the Treasurer, and any income derived from an investment must be paid into the Fund.

(4) Subject to subsection (3), money may only be paid out of the Fund—

(a) for a purpose listed in subsection (1); and

S. 141(4)(b) amended by No. 68/2016 s. 138.

(b) on the written authority of the Victorian Fisheries Authority.

(5) If an item of plant or equipment purchased with money from the Fund is sold, the proceeds of the sale must be paid into the Fund.

(6) A reference in subsection (5) to an item of plant or equipment purchased with money from the Fund includes a reference to any item—

(a) that was purchased with money from the Conservation, Forests and Lands Plant and

Machinery Fund established under section 23 of the **Conservation, Forests and Lands Act 1987**; and

(b) that was listed in the fixed asset register of the Department at the time of its sale.

(7) In this section ***plant*** includes boats and motor vehicles.

142 Immunity provision

S. 142(1) amended by Nos 40/2002 s. 25(a)(b), 35/2009 s. 39, 68/2016 s. 139, 40/2019 s. 33.

(1) The Minister, the Secretary, the Victorian Fisheries Authority, the chief executive officer, a delegate or deputy of the Minister, Secretary, Victorian Fisheries Authority or chief executive officer, or an employee of the Victorian Fisheries Authority, an officer of the Department, an authorised officer, a member of the Commercial Fisheries Licensing Panel, a member or deputy of the Compensation Assessment Panel (established under Part 10) or a member or deputy of the Compensation Appeals Tribunal (established under Part 10) is not personally liable for anything done or omitted to be done in good faith—

S. 142(1)(a) amended by No. 5/1997 s. 50(1)(q).

(a) in the performance of a function or the exercise of a power under this Act; or

S. 142(1)(b) amended by No. 5/1997 s. 50(1)(q).

(b) in the reasonable belief that the act or omission was in the performance of a function under this Act.

(2) Any liability that would but for subsection (1) attach to the persons specified in subsection (1) attaches instead to the Crown.

143 No compensation payable

(1) Except as otherwise provided in this Act, no compensation is payable by the Crown to any person for any loss or damage as a result of the

enactment of this Act and the repeal of the **Fisheries Act 1968**.

(2) Without limiting the generality of subsection (1), no compensation is payable because of—

(a) the conversion of a licence or permit under the **Fisheries Act 1968** to a licence or permit under this Act; or

(b) the failure of licensees to achieve their quotas or otherwise take fish in accordance with any licence or permit; or

(c) the seizure, detention or forfeiture of any fish, protected aquatic biota, declared noxious aquatic species, equipment or other property in accordance with sections 105 or 106; or

(d) the making and carrying out of an order under section 85(4); or

(e) the suspension, cancellation or refusal to issue or renew any licence or permit in accordance with this Act; or

S. 143(2)(f) amended by No. 5/1997 s. 50(1)(r).

(f) any closure in accordance with section 67.

(3) Nothing in this section prevents any action or proceedings to recover damages for any loss or damage suffered as a result of or arising out of any person negligently or unlawfully exercising, purporting to exercise or failing to exercise any power, duty or authority conferred by or under this Act.

S. 144 amended by No. 67/1996 s. 5(a).

144 Supreme Court—limitation of jurisdiction

(1) It is the intention of this section to alter or vary section 85 of the **Constitution Act 1975** to the extent necessary to prevent the Supreme Court

entertaining actions of a kind to which section 143(1) and 143(2) apply.

S. 144(2) inserted by No. 67/1996 s. 5(b).

(2) It is the intention of sections 153A and 153B to alter or vary section 85 of the **Constitution Act 1975**.

S. 145 substituted by No. 5/1997 s. 37, amended by No. 80/2000 s. 16, substituted by No. 68/2016 s. 140.

145 Availability for inspection

The Victorian Fisheries Authority must publish on its Internet site a copy of any fisheries notice, Order in Council, notice, declaration, management plan, quota order, conditions imposed by the Victorian Fisheries Authority under section 52 on a class of fishery licence or Ministerial direction.

S. 145A (Heading) amended by Nos 64/2013 s. 5(1), 68/2016 s. 141(1).

S. 145A inserted by No. 108/2003 s. 42.

145A Victorian Fisheries Authority may supply names to representative bodies

S. 145A(1) substituted by No. 64/2013 s. 5(2), amended by No. 68/2016 s. 141(2).

(1) If a levy is collected with respect to a class of licence or an individual quota unit for the purposes of making a grant to a representative body to which that class of licence or individual quota unit relates, the Victorian Fisheries Authority may give the representative body the following details—

(a) the name of each person who holds a licence of that class or who has been allocated individual quota units of that class and the name of any other person whose name appears on any licence or individual quota unit of that class;

(b) the business address, the business telephone number, and the business facsimile number or email address of each such person;

(c) the number of licences and individual quota units of that class held.

S. 145A(2) amended by No. 68/2016 s. 141(2).

(2) Despite subsection (1), the Victorian Fisheries Authority must not supply any of those details if, in the opinion of the Victorian Fisheries Authority, it would not be in the public interest to do so.

S. 145A(3) amended by No. 68/2016 s. 141(3).

(3) The Victorian Fisheries Authority may impose conditions in relation to the supply of any details under this section.

S. 145A(4) substituted by No. 40/2019 s. 34.

(4) A person must not breach a condition.

Penalty: 200 penalty units or imprisonment for 12 months.

S. 145A(5) inserted by No. 40/2019 s. 34.

(5) A person must not assist, encourage or direct another person, or have any agreement, arrangement or understanding with another person, to breach a condition.

Penalty: 200 penalty units or imprisonment for 12 months.

Penalty applying to this subsection: 200 penalty units or imprisonment for 12 months.

146 Secrecy provision

(1) Subject to this section, a person who is, or has at any time been—

(a) the Secretary;

(b) appointed for the purposes of this Act;

(c) engaged as a member of the staff of the Secretary or as an authorised officer;

(d) engaged under contract by the Secretary, or employed by a person engaged under contract by the Secretary;

S. 146(1)(da) inserted by No. 68/2016 s. 142.

(da) a director of the Victorian Fisheries Authority Board, the chief executive officer,

or an employee of the Victorian Fisheries Authority;

(e) a member of the Fisheries Co-Management Council;

S. 146(1)(ea) inserted by No. 80/2000 s. 17.

(ea) a member of the Fisheries Revenue Allocation Committee;

(f) a member of a fishery committee;

(g) a member of the Commercial Fisheries Licensing Panel;

(h) a member or deputy of the Licensing Appeals Tribunal;

S. 146(1)(ha) inserted by No. 40/2002 s. 26.

(ha) a member or deputy of the Compensation Assessment Panel (established under Part 10);

S. 146(1)(hb) inserted by No. 40/2002 s. 26.

(hb) a member or deputy of the Compensation Appeals Tribunal (established under Part 10);

(i) authorised to perform or exercise any function or power under this Act—

must not, except to the extent necessary to perform official duties, or to perform or exercise such a function or power, either directly or indirectly, make a record of, or divulge or communicate to any person, any information obtained in confidence or relating to the personal affairs of another person that is or was acquired by the person by reason of being or having been so appointed, engaged or authorised, or make use of any such information, for any purposes other than the performance of official duties or the performance or exercise of that function or power.

Penalty: 10 penalty units.

(2) Nothing in subsection (1) precludes a person from —

(a) producing a document to a court in the course of criminal proceedings or in the course of any proceedings against this Act;

(b) divulging or communicating to a court in the course of any proceedings referred to in paragraph (a) any matter or thing coming under the notice of the person in the performance of official duties or in the performance of a function or the exercise of a power referred to in that subsection;

S. 146(2)(c) substituted by No. 69/2004 s. 20.

(c) producing some or all of a document or divulging or communicating information to a person or body specified by the regulations for the purposes of this section if the production, divulging or communicating is authorised by the regulations or the Secretary and complies with any conditions or restrictions specified by the regulations or the Secretary for the purposes of this section;

(d) producing a document or divulging or communicating information that is required or permitted by any Act to be produced, divulged or communicated, as the case may be if, where the document or information relates to the personal affairs of another person, that other person has given consent in writing;

S. 146(2)(e) inserted by No. 5/1997 s. 38.

(e) using skills that were developed as a result of having access to any information referred to in subsection (1) where the use of the skills does not involve the disclosure of the information.

147 Improper use of information

A person must not use any information obtained during the course of the person's duties under this Act to obtain directly or indirectly any pecuniary or other advantage for himself or herself or for any other person.

Penalty:200 penalty units or imprisonment for 12 months or both.

S. 147A inserted by No. 69/2004 s. 21.

147A Use of information contrary to restrictions

(1) This section applies if—

(a) a person receives from a person listed in section 146(1) any information obtained in confidence, or that relates to the personal affairs of another person, that was acquired by the person listed while acting in the capacity in respect of which the person is listed in section 146; and

S. 147(1)(b) amended by No. 68/2016 s. 143.

(b) the giving of the information by the person listed was subject to conditions or restrictions imposed by the regulations, the Secretary or the Victorian Fisheries Authority concerning the use of the information.

(2) The person who received the information must not use, divulge or communicate the information in a way that breaches any of those conditions or restrictions.

Penalty:200 penalty units.

148 Application—general provisions

S. 148(1) amended by No. 5/1997 s. 39(2)(a).

(1) Subject to any express provisions in this Act, the following provisions apply to or in respect of an application under this Act.

(2) An application must be—

S. 148(2)(a) amended by No. 68/2016 s. 144(1).

(a) in the form approved for the purpose by the Victorian Fisheries Authority;

(b) accompanied by the relevant prescribed application fee (if any);

S. 148(2)(c) amended by No. 68/2016 s. 144(1).

(c) accompanied by any information that the Victorian Fisheries Authority requires for the purpose of the application;

S. 148(2)(d) amended by No. 68/2016 s. 144(1).

(d) forwarded to the Victorian Fisheries Authority.

S. 148(3) amended by No. 68/2016 s. 144(2).

(3) The Victorian Fisheries Authority may by notice to the applicant require any further information that the Victorian Fisheries Authority considers is reasonably necessary in any particular case and which must be provided if the application is to be dealt with.

S. 148(4) substituted by No. 5/1997 s. 39(1), amended by No. 68/2016 s. 144(3).

(4) If the Victorian Fisheries Authority is of the opinion that the interests of one or more third parties may be adversely affected by the grant of a licence (other than a recreational fishery licence) or a permit that is the subject of a particular application, the Victorian Fisheries Authority may require the applicant to—

S. 148(4)(a) substituted by No. 35/2009 s. 40, amended by No. 68/2016 s. 144(3).

(a) undertake consultation as directed by the Victorian Fisheries Authority;

(b) advertise the application in a newspaper circulating in the affected area.

(5) A newspaper advertisement under subsection (4) must specify the address and a closing date not less than 21 days from the date of the advertisement for objections and comments.

S. 148(6) amended by No. 68/2016 s. 144(4).

(6) The Victorian Fisheries Authority must consider any objection or comment received in accordance with this section before granting the relevant licence or permit.

(7) An applicant must not give information which is false or misleading.

Penalty:50 penalty units.

(8) It is a defence to a charge for an offence against subsection (7) if the person charged proves that the person believed on reasonable grounds that the information was true and not misleading.

S. 148(9) amended by No. 68/2016 s. 144(5).

(9) If an offence against subsection (7) is found proven, and the Victorian Fisheries Authority considers that had the correct information been provided—

S. 148(9)(a) amended by No. 68/2016 s. 144(5).

(a) the application would have been refused, the Victorian Fisheries Authority may cancel the licence, permit or other matter and disqualify the person from holding such a licence, permit or other matter for such period as the Victorian Fisheries Authority considers appropriate; or

S. 148(9)(b) amended by No. 68/2016 s. 144(5).

(b) the application would have been materially affected, the Victorian Fisheries Authority may amend the licence, permit or other matter.

S. 148(10) amended by Nos 5/1997 s. 39(2)(b)(i)(ii), 68/2016 s. 144(6).

(10) If an applicant for the issue or transfer of a fishery licence or a permit under this Act is charged with an offence the conviction for which would prevent the applicant from satisfying the requirements of this Act, the Victorian Fisheries Authority may defer consideration of the application until the proceedings against the applicant have been determined.

149 Licences and permits—general provisions

S. 149(1) substituted by No. 5/1997 s. 40(1).

(1) While a licence is suspended under this Act, the person who holds the licence is to be treated as if he or she did not hold the licence.

S. 149(2) repealed by No. 5/1997 s. 40(1), new s. 149(2) inserted by No. 108/2003 s. 43.

(2) Nothing in subsection (1) is intended to interfere with the right of the person to hold the licence—subsection (1) is merely intended to ensure that the person cannot exercise the rights of a licence holder while the licence is suspended.

S. 149(3) amended by No. 5/1997 s. 40(2).

(3) The holder of a licence or permit or the personal representative of a deceased holder of a licence or permit or a registered financial interest in a licence may surrender the licence or permit in accordance with the regulations.

150 Royalties

(1) A royalty may be imposed under this Act in respect of any licence or permit issued under this Act.

S. 150(1A) inserted by No. 58/2005 s. 9(1).

(1A) A royalty may be imposed under this Act in respect of an individual abalone quota unit issued under this Act.

(2) The regulations may prescribe a royalty—

(a) at a different rate in respect of specified classes of licences or permits;

S. 150(2)(aa) inserted by No. 58/2005 s. 9(2).

(aa) at a different rate in respect of specified classes of individual abalone quota units or in respect of specified classes of individual abalone quota units in relation to specified zones;

S. 150(2)(b) amended by Nos 5/1997 s. 41(1), 40/2019 s. 35(b).

(b) at a rate fixed by reference to—

(i) the value; or

(ii) the price; or

(iii) the numbers; or

(iv) the weight; or

(v) the volume; or

(vi) the quota; or

S. 150 (2)(b)(via) inserted by No. 64/2013 s. 6.

(via) the levies payable in respect of a class of licence, permit or individual abalone quota unit; or

(vii) any other prescribed factor; or

S. 150(2)(b)(viii) amended by No. 40/2019 s. 35(a).

(viii) any combination of the above factors—

of or relating to fish, protected aquatic biota or noxious aquatic species;

(c) at a rate calculated in accordance with paragraph (b) for a specified period or by reference to the duration of the licence or permit.

S. 150(3) substituted by No. 5/1997 s. 41(2).

(3) The regulations may prescribe the manner in which, the period in respect of which, and the date by when, the royalty is to be paid.

S. 150(4) repealed by No. 35/2009 s. 41.

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151 Levy

S. 151(1) amended by Nos 80/2000 s. 18(a), 64/2013 s. 7(1), 68/2016 s. 145.

(1) Subject to and in accordance with this section, there may be charged, levied and collected by the Victorian Fisheries Authority in respect of each prescribed class of licence, individual quota unit or permit prescribed levies at prescribed rates.

S. 151(1A) inserted by No. 58/2005 s. 10(1), repealed by No. 64/2013 s. 7(2).

* * * * *

S. 151(2) substituted by No. 5/1997 s. 41(3), amended by No. 80/2000 s. 18(b).

(2) A prescribed rate of levy may be fixed—

(a) as a fixed amount; or

S. 151(2)(b) substituted by No. 64/2013 s. 7(3).

(b) at a rate fixed by reference to—

(i) specified zones; or

(ii) the price or average price of a species of fish landed in a fishery over a specified period; or

(iii) the weight or average weight of a species of fish landed in a fishery over a specified period; or

(iv) the number of licences or individual quota units held; or

(v) fees payable in respect of a class of licence, permit or individual quota unit; or

(vi) royalties payable in respect of a class of licence, permit or individual quota unit; or

(vii) levies that were payable in respect of a class of licence, permit or individual quota unit in a previous licensing year; or

(viii) in the case of a Rock Lobster Fishery Access Licence, the number of rock lobster pots specified in the licence; or

(ix) in the case of an aquaculture licence, the total of one or more amounts

determined in respect of areas specified in the licence; or

(x) any other prescribed factor relating to a fishery or species of fish; or

(xi) any combination of the factors referred to in this subsection; or

S. 151(2)(c) amended by No. 17/2002 s. 30, substituted by No. 64/2013 s. 7(3).

(c) at a rate calculated in accordance with paragraph (b) for a specified period, including the duration of a licence, permit or individual quota unit, or at a particular point in time.

S. 151(2)(d) inserted by No. 17/2002 s. 30, amended by No. 22/2004 s. 7(a), repealed by No. 64/2013 s. 7(3).

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S. 151(2)(da) inserted by No. 58/2005 s. 10(2), repealed by No. 64/2013 s. 7(3).

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S. 151(2)(e) inserted by No. 22/2004 s. 7(b), amended by No. 51/2007 s. 10(a), repealed by No. 64/2013 s. 7(3).

* * * * *

S. 151(2)(f) inserted by No. 51/2007 s. 10(b), repealed by No. 64/2013 s. 7(3).

* * * * *

S. 151(3) substituted by No. 5/1997 s. 41(3), amended by No. 80/2000 s. 18(c).

(3) The regulations may prescribe the manner in which, the period in respect of which, and the date by when, a levy is to be paid.

S. 151(4) amended by No. 80/2000 s. 18(d).

(4) A levy may be used for any one or more of the following—

(a) fisheries promotion and marketing;

S. 151(4)(b) substituted by No. 5/1997 s. 41(4).

(b) compliance;

S. 151(4)(ba) inserted by No. 5/1997 s. 41(4).

(ba) management;

S. 151(4)(bc) inserted by No. 5/1997 s. 41(4).

(bc) administration;

S. 151(4)(bd) inserted by No. 5/1997 s. 41(4), repealed by No. 35/2009 s. 42(1), new s. 151(4)(bd) inserted by No. 64/2013 s. 7(4).

(bd) making a grant under subsection (5);

(c) research;

(d) monitoring;

(e) any other purpose prescribed for the purposes of this section.

S. 151(5) amended by No. 5/1997 s. 41(5) (as amended by No. 74/2000 s. 3(Sch. 1 item 50)), substituted by Nos 35/2009 s. 42(2), 64/2013 s. 7(5).

(5) The Minister may, out of the proceeds of a levy of a class of licence, individual quota unit or permit prescribed under subsection (1), make a grant to any person or body to which the class of licence, individual quota unit or permit relates.

S. 151(5A) inserted by No. 5/1997 s. 41(6), repealed by No. 64/2013 s. 7(6).

* * * * *

S. 151(6) amended by No. 80/2000 s. 18(c).

(6) The Minister may give an exemption to any person or class of persons from the payment of a levy subject to and in accordance with the regulations.

(7) Section 30 of the **Conservation, Forests and Lands Act 1987** applies to any unpaid levy under this section.

S. 151(8) repealed by No. 35/2009 s. 42(3).

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S. 151(8A) inserted by No. 17/2002 s. 31, amended by No. 108/2003 s. 44(1), repealed by No. 35/2009 s. 42(3).

* * * * *

S. 151(8B) inserted by No. 17/2002 s. 31, repealed by No. 35/2009 s. 42(3).

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S. 151(8C) inserted by No. 17/2002 s. 31, repealed by No. 35/2009 s. 42(3).

* * * * *

S. 151(9) substituted by No. 108/2003 s. 44(2).

(9) The Minister must ensure that the operation of this section is reviewed as soon as is possible after 1 May 2009.

(10) The Minister must table a report of the outcome of the review in each House of the Parliament.

S. 151A inserted by No. 5/1997 s. 42.

151A Additional provisions applying to royalties and levies

(1) Regulations made under section 150 or 151 may provide for all or any of the following matters—

(a) methods of calculating royalties and levies;

(b) the reduction, waiver or refund, in whole or in part, of any royalty or levy;

S. 151A(1)(ba) inserted by No. 35/2009 s. 72.

(ba) for royalties and levies to be charged on a pro rata basis;

(c) how royalties and levies are to be paid (including payments by instalments);

(d) the recovery, and payment, of interest on arrears.

(2) Regulations under subsection (1)(b) may be expressed to apply either generally or specifically —

(a) in respect of certain matters or transactions or classes of matters or transactions; or

(b) when an event happens; or

(c) in respect of certain people or classes of people; or

(d) in respect of any combination of matters, transactions, events or people—

and may be expressed to apply subject to specified conditions or in the discretion of any specified person or body.

S. 151B inserted by No. 80/2000 s. 19.

151B Recreational Fishing Licence Trust Account

(1) The Minister is to establish a trust account to be called the Recreational Fishing Licence Trust Account.

(2) Into the Account must be paid—

S. 151B(2)(a) amended by No. 64/2013 s. 11(2).

(a) the levies and application fees received in respect of recreational fishery licences under this Act;

(b) income from the investment of the Trust Account;

(c) all other money authorised to be paid to the Trust Account by the Minister.

(3) The following may be paid out of the Account—

(a) amounts determined by the Minister for the purpose of improving recreational fishing;

S. 151B(3)(b) amended by Nos 35/2009 s. 43, 64/2013 s. 11(2).

(b) the costs and expenses incurred in the administration of recreational fishery licences and the Account.

(4) The Minister must cause a report on how amounts paid into the Account were disbursed—

(a) to be prepared by 1 October each year; and

(b) to be laid before each House of Parliament on or before the 7th sitting day of that House after the report has been prepared.

(5) The Minister may invest money standing to the credit of the Account in any manner in which trust funds may be invested under the **Trustee Act 1958**.

S. 151C inserted by No. 80/2000 s. 19, repealed by No. 35/2009 s. 44.

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Division 3—Fisheries notices and regulations

152 Fisheries notices

S. 152(1) amended by No. 35/2009 s. 45(1).

(1) The Minister may by a fisheries notice in relation to any fishery—

S. 152(1)(a) substituted by No. 5/1997 s. 43(1).

(a) fix and enforce catch limits for any species of fish specified in the notice;

S. 152(1)(aa) inserted by No. 50/2005 s. 15.

(aa) fix and enforce minimum or maximum size limits for any species of fish specified in the notice;

S. 152(1)(b) substituted by No. 5/1997 s. 43(1).

(b) fix periods during which any specified fishing activity in relation to fish is prohibited or allowed;

S. 152(1)(c) substituted by No. 5/1997 s. 43(1).

(c) provide for the management of a specified area of inland waters;

(d) close to harvesting for the period of time specified in the notice any shellfish beds or shellfish farms, where necessary in response to adverse environmental conditions;

S. 152(1)(e) repealed by No. 24/2003 s. 93.

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S. 152(1)(f) amended by No. 108/2003 s. 45(1)(a).

(f) specify measures for the protection of any fishery, species, ecosystem or habitat;

(g) provide for any matter or thing relating to protected aquatic biota and noxious aquatic species in accordance with this Act;

(h) provide for any other matter or thing which this Act requires or permits to be done by a fisheries notice.

S. 152(2) substituted by No. 108/2003 s. 45(2), repealed by No. 35/2009 s. 45(2).

* * * * *

S. 152(2A) inserted by No. 108/2003 s. 45(2), repealed by No. 35/2009 s. 45(2).

* * * * *

S. 152(3) substituted by No. 5/1997 s. 43(2).

(3) If a provision of a fisheries notice is inconsistent with any regulations, management plan, Ministerial direction, licence or permit, the fisheries notice prevails to the extent of the inconsistency.

(4) A fisheries notice does not apply to a fisheries reserve unless the fisheries notice expressly provides that it does apply.

(5) A fisheries notice—

(a) must be published in the Government Gazette;

S. 152(5)(b) substituted by No. 5/1997 s. 43(3), repealed by No. 35/2009 s. 45(3).

* * * * *

S. 152(5)(c) substituted by Nos 5/1997 s. 43(3), 35/2009 s. 45(3), 64/2013 s. 8(1), amended by No. 68/2016 s. 146.

(c) must be published on the Victorian Fisheries Authority's Internet site;

(d) comes into operation on the date it is published or on such later date as is specified in the fisheries notice;

(e) unless sooner revoked, is revoked by virtue of this section on the day which is 12 months after the date on which it came into operation.

S. 152(5AA) inserted by No. 64/2013 s. 8(2).

(5AA) The Minister must cause the following to be published in a newspaper circulating in the area affected by a fisheries notice—

(a) a notice of the making of the fisheries notice; and

S. 152(5AA)(b) amended by No. 68/2016 s. 146.

(b) a reference to the Victorian Fisheries Authority's Internet site on which the fisheries notice is published.

S. 152(5A) inserted by No. 5/1997 s. 43(4).

(5A) Despite subsection (5)(e), unless sooner revoked, a fisheries notice made under subsection (1)(c) is revoked on the date specified in the notice, which must be a date that is not more than 3 years after the date the notice comes into operation.

(6) A fisheries notice is a subordinate instrument for the purposes of the **Interpretation of Legislation**

Act 1984.

(7) A fisheries notice—

(a) may be of general or limited application; and

(b) may make different provision according to differences in times, places, localities, circumstances, boats, persons, classes of persons or fish, whether or not any times, places, circumstances, boats, persons or fish are determined or ascertainable before, at or after the making of the notice; and

S. 152(7)(c) amended by No. 108/2003 s. 45(1)(b).

(c) may impose penalties not exceeding 50 penalty units for a contravention of or an offence under the notice; and

(d) may apply, adopt or incorporate (with or without modification)—

(i) the provisions of any document, code, standard, rule, specification or method whether as formulated, issued, prescribed or published at the time the notice is made, or at any time before then; or

(ii) the provisions of any Act of the Commonwealth or of another State or of a Territory or the provisions of any subordinate instrument under that Act; and

(e) may confer powers or impose duties in connection with the notice on any person or body; and

(f) may provide for the exemption of persons or things or a class of persons or things from any of the provisions of the fisheries notice, whether unconditionally or on specified

conditions and either wholly or to such an extent as is specified.

153 Regulations

(1) The Governor in Council may make regulations for or with respect to any matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act, or to any fishery management plan, recognised code of fishing practice or intergovernmental agreement or arrangement in relation to fisheries management.

S. 153(2) amended by No. 5/1997 s. 44(a).

(2) Without limiting or derogating from subsection (1) or any other provision of this Act, regulations made under this Act may include regulations for or with respect to the matters listed in Schedule 3.

(3) A power conferred by this Act to make regulations may be exercised—

(a) either in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified case or class of case; and

(b) so as to make, as respects the cases in relation to which it is exercised—

(i) the same provision for all cases in relation to which the power is exercised, or different provision for different cases or classes of case, or different provisions for the same case or class of case for different purposes; or

(ii) any such provision either unconditionally or subject to any specified condition.

(4) Regulations made under this Act may be made—

S. 153(4)(a) substituted by No. 51/2007 s. 11.

(a) so as to apply by way of general or of specially limited application; and

S. 153(4)(ab) inserted by No. 51/2007 s. 11.

(ab) so as to differ according to differences in time, place or circumstance; and

(b) so as to require a matter affected by the regulations to be—

(i) in accordance with a specified standard or specified requirement; or

(ii) approved by or to the satisfaction of a specified person or body or a specified class of persons or bodies; and

S. 153(4)(c) amended by No. 5/1997 s. 44(b).

(c) so as to apply, adopt or incorporate any matter contained in any document, code, standard, rule, order, regulation, management plan, specification or method formulated, issued, prescribed or published by any authority or body whether—

(i) wholly or partially or as amended by the regulations; or

(ii) as formulated, issued, prescribed or published at the time the regulations are made or at any time before then; or

(iii) as formulated, issued, prescribed or published from time to time; and

S. 153(4)(d) amended by Nos 5/1997 s. 44(c), 64/2013 s. 9(1).

(d) so as to leave any matter or thing to be from time to time determined, applied, dispensed with or regulated by any government department, municipal council, statutory body or public authority or any officer thereof; and

S. 153(4)(e) amended by No. 64/2013 s. 9(1)(2).

(e) so as to confer powers or impose duties in connection with the regulations on any

government department, municipal council, public authority, representative body or any officer thereof; and

(f) so as to apply, adopt or incorporate, with or without modification, the provisions of any Act or of any regulations made under any Act as in force at a particular time; and

S. 153(4)(g) amended by No. 5/1997 s. 44(d).

(g) so as to provide in a specified case or class of case for the exemption of persons or things or a class of persons or things from any of the provisions of this Act or the regulations, whether unconditionally or on specified conditions and either wholly or to such an extent as is specified; and

(h) so as to impose a penalty not exceeding 20 penalty units for a contravention of the regulations.

(5) If under subsection (4)(c)(iii) a regulation has applied, adopted or incorporated any matter contained in any document, code, standard, rule, specification or method as formulated, issued, prescribed or published from time to time and that document, code, standard, rule, specification or method is at any time amended, until the Minister causes notice to be published in the Government Gazette of that amendment, the document, code, standard, rule, specification or method is to be taken to have not been so amended.

(6) A power conferred by this Act to make regulations providing for the imposition of fees may be exercised by providing for all or any of the following matters—

(a) specific fees;

(b) maximum or minimum fees;

(c) maximum and minimum fees;

(d) scales of fees according to the value of goods or services provided for the fees;

(e) methods of calculation of fees;

(f) the payment of fees either generally or under specified conditions or in specified circumstances;

(g) the reduction, waiver or refund, in whole or in part, of the fees;

S. 153(6)(ga) inserted by No. 35/2009 s. 73.

(ga) for fees to be charged on a pro rata basis;

S. 153(6)(gb) inserted by No. 35/2009 s. 73.

(gb) the manner in which, the period in respect of which, and the date by when, fees are to be paid;

S. 153(6)(h) substituted by No. 5/1997 s. 44(e).

(h) how fees are to be paid (including payments by instalments);

S. 153(6)(i) inserted by No. 5/1997 s. 44(e).

(i) the recovery, and payment, of interest on arrears.

(7) If under subsection (6)(g) regulations provide for a reduction, waiver or refund, in whole or in part, of a fee, the reduction, waiver or refund may be expressed to apply either generally or specifically —

(a) in respect of certain matters or transactions or classes of matters or transactions; or

(b) in respect of certain documents or classes of documents; or

(c) when an event happens; or

(d) in respect of certain persons or classes of persons; or

(e) in respect of any combination of matters, transactions, documents, events or persons—

and may be expressed to apply subject to specified conditions or in the discretion of any specified person or body.

S. 153(8) inserted by No. 64/2013 s. 9(3), amended by No. 9/2020 s. 390(Sch. 1 item 42).

(8) In this section ***municipal council*** has the same meaning as ***Council*** has in section 3(1) of the **Local Government Act 2020**.

Pt 8 Div. 4 (Heading) inserted by No. 51/2007 s. 12.

Division 4—Cancellation of licences and restrictions on fishing

S. 153A inserted by No. 67/1996 s. 3.

153A Cancellation of scallop licences

(1) In section 14 of the **Fisheries Act 1968**—

(a) for subsection (1)(b) **substitute**—

"(b) for dredging for or taking scallops for sale (other than in or from the waters of Port Phillip Bay);";

(b) in subsection (3), after "take scallop for sale" **insert** "in or from any waters other than the waters of Port Phillip Bay".

(2) Any licence issued under section 14 of the **Fisheries Act 1968** that licences a registered fishing boat for dredging for or taking scallops for sale in all Victorian waters or in the waters of Port Phillip Bay is, by virtue of this section, cancelled.

(3) If a licence that is cancelled by this section included an entitlement to dredge for or take scallops in waters other than the waters of Port Phillip Bay, the Secretary must immediately issue

a new licence that licenses the registered fishing boat described in the cancelled licence for dredging for or taking scallops for sale in those other waters.

(4) The Secretary must issue the new licence under subsection (3) at no additional cost to the person who held the cancelled licence.

(5) Subject to subsection (3), any right or privilege acquired or accrued against the State of Victoria in respect of a licence cancelled by this section is extinguished, despite anything to the contrary in section 14(2) of the **Interpretation of Legislation Act 1984**.

S. 153B inserted by No. 67/1996 s. 3.

153B Acquisition of scallop licences

(1) The registered owner of a boat that has its licence cancelled under section 153A is entitled to be paid an amount determined by the Treasurer and the Minister.

(2) Despite any Act or law to the contrary, the State of Victoria is not liable in any other way for any loss, damage or injury whatsoever resulting from the cancellation of a licence under section 153A.

(3) Any amount determined by the Treasurer and the Minister under this section must be paid out of the Consolidated Fund (which is, by this subsection, appropriated to the necessary extent).

S. 153C inserted by No. 51/2007 s. 13.

153C Restriction against commercial net fishing in Western Port

(1) Despite anything to the contrary in this Act, a holder of a Westernport/Port Phillip Bay Fishery Access Licence is not authorised to use any fishing net in Western Port on and from 1 December 2007.

(2) The holder of a Westernport/Port Phillip Bay Fishery Access Licence that is in force

immediately before section 13 of the **Fisheries Amendment Act 2007** comes into operation may be entitled to be paid an amount determined by the Treasurer and the Minister.

(3) Despite any Act (other than the Charter of Human Rights and Responsibilities) or law to the contrary, the State of Victoria is not liable in any other way for any loss, damage or injury whatsoever resulting from or arising out of the restriction on the use of any fishing net in Western Port under subsection (1).

(4) Any amount determined by the Treasurer and the Minister under this section must be paid out of the Consolidated Fund (which is, by this subsection, appropriated to the necessary extent).

(5) In this section—

S. 153C(5) def. of *Western Port* amended by No. 40/2019 s. 39(2).

Western Port means all of the waters of the bay known as Western Port which lie north of a line bearing 53° east from Cape Woolamai to the opposite shore and a line running directly from West Head at Flinders to the southernmost point of Point Grant on Phillip Island;

Westernport/Port Phillip Bay Fishery Access Licence means the class of access licence referred to in regulation 201 of the Fisheries Regulations 1998.

Pt 8 Div. 5 (Heading and ss 153D–153L) inserted by No. 64/2015 s. 5.

Division 5—Restriction against commercial net fishing in Port Phillip Bay

S. 153D inserted by No. 64/2015 s. 5.

153D Definitions for this Division

In this Division—

Corio Bay means any of the waters of Port Phillip Bay west of longitude 144°30';

election year means a 12 month period commencing on 1 April;

licence holder means—

(a) the holder of a Western Port/Port Phillip Bay Fishery Access Licence; or

(b) the holder of a Purse Seine (Port Phillip Bay) Fishery Access Licence;

Port Phillip Bay means all the waters within the bays lying north of a line from the most seaward point of Point Lonsdale to the most seaward point of Point Nepean and includes the waters of Hobsons Bay and Corio Bay, but not the waters of Swan Bay;

Purse Seine (Port Phillip Bay) Fishery Access Licence means a licence belonging to the class of access licences of that name created by regulations made for the purposes of section 38;

Western Port/Port Phillip Bay Fishery Access Licence means a licence belonging to the class of access licences of that name created by regulations made for the purposes of section 38.

S. 153E inserted by No. 64/2015 s. 5.

153E Restriction against commercial net fishing in Port Phillip Bay

(1) Despite anything to the contrary in this Act or any regulations made under this Act—

(a) a licence holder is not authorised to use any fishing net in Corio Bay on and after 1 April 2018; and

S. 153E(1)(b) substituted by No. 40/2019 s. 36(1).

(b) the holder of a Western Port/Port Phillip Bay Fishery Access Licence is not authorised to use any fishing net anywhere in Port Phillip Bay on or after the earlier of the following—

(i) the day of receiving any compensation under section 153I(3);

(ii) 1 April 2022.

S. 153E(2) repealed by No. 40/2019 s. 36(2).

* * * * *

(3) Despite anything to the contrary in sections 64 and 64A, the Minister must not make an order in relation to the commercial fishery operating in Western Port and Port Phillip Bay for the 12 month period commencing on 1 April 2022 that—

(a) sets a total allowable catch that exceeds 88 tonnes of snapper; or

(b) allocates quota units to each holder of a Western Port/Port Phillip Bay Fishery Access Licence that are other than the equivalent of 11 tonnes of snapper.

S. 153F inserted by No. 64/2015 s. 5.

153F Election to retain licence

(1) Before 1 April 2016—

(a) a holder of a Western Port/Port Phillip Bay Fishery Access Licence may elect to retain their licence on and after 1 April 2022; and

(b) the Secretary must determine which of those elections are successful.

(2) The procedure by which a holder of a Western Port/Port Phillip Bay Fishery Access Licence may elect to retain their licence and by which the

Secretary determines which elections are successful is set out in Part 1 of Schedule 4.

(3) The holder of a Western Port/Port Phillip Bay Fishery Access Licence who is notified by the Secretary in accordance with Part 1 of Schedule 4 that their election is successful is entitled to retain that licence on and after 1 April 2022.

S. 153G inserted by No. 64/2015 s. 5.

153G Election to surrender licence

(1) Before 1 April 2016—

(a) any licence holder may elect to surrender their licence; and

(b) an election to surrender by a licence holder who is the holder of a Western Port/Port Phillip Bay Fishery Access Licence may be made concurrently with an election to retain their licence referred to in section 153F(1).

(2) In each of the following election years until 1 April 2021, a licence holder, other than a licence holder who is entitled under section 153F(3) to retain their licence on and after 1 April 2022, may elect to surrender their licence.

(3) The procedure by which a licence holder may elect to surrender their licence is set out in Part 2 of Schedule 4.

S. 153H inserted by No. 64/2015 s. 5.

153H Power of Secretary to cancel licence

(1) Before 1 April 2016, the Secretary must cancel the licence of any licence holder who—

(a) has elected to surrender their licence under section 153G(1); and

(b) in the case of a licence holder who is the holder of a Western Port/Port Phillip Bay Fishery Access Licence, has not successfully elected to retain their licence under section 153F.

S. 153H(2) amended by No. 68/2016 s. 147(1).

(2) In each of the following elections years until but not including the election year commencing 1 April 2021, the Victorian Fisheries Authority must cancel the licence of any licence holder who has elected to surrender their licence.

S. 153H(3) amended by No. 68/2016 s. 147(1).

(3) On or after 1 April 2021 and before 1 April 2022, the Victorian Fisheries Authority must cancel the licence of any remaining licence holder other than a licence holder who is entitled under section 153F(3) to retain their licence.

S. 153H(4) amended by No. 68/2016 s. 147(2).

(4) For the purposes of this section, the Secretary or the Victorian Fisheries Authority may specify a day on which the cancellation of a licence takes effect, being a day occurring before—

(a) the commencement of the following election year, in the case of the cancellation of a licence under subsection (1) or (2); or

(b) 1 April 2022, in the case of a cancellation under subsection (3).

S. 153I inserted by No. 64/2015 s. 5.

153I Compensation

S. 153I(1) amended by No. 68/2016 s. 148.

(1) A licence holder whose licence is cancelled by the Secretary or the Victorian Fisheries Authority under section 153H is only entitled to be paid compensation calculated in accordance with, and limited to, Part 3 of Schedule 4.

(2) The compensation is to be paid out of the Consolidated Fund (which, by this section, is appropriated to the extent necessary).

S. 153I(3) inserted by No. 40/2019 s. 37.

(3) The holder of a Western Port/Port Phillip Bay Fishery Access Licence who has been given a notice referred to in section 153F(3) is entitled to be paid an amount of $205 000 out of the Consolidated Fund (which is, by this subsection,

appropriated to the extent necessary) on the earlier of the following—

(a) on making an application to the Secretary for that amount;

(b) 1 April 2022.

S. 153J inserted by No. 64/2015 s. 5.

153J State not liable

(1) Despite any Act or law to the contrary and except as provided in this Division, the State of Victoria is not liable in any way for any loss, damage or injury whatsoever resulting directly or indirectly from or arising out of any action taken or decision made under this Division or Schedule 4.

(2) For the avoidance of doubt, the reference in subsection (1) to an action taken or a decision made includes, but is not limited to—

(a) the restriction on the use of any fishing net in Corio Bay; and

(b) the restriction on the use of any fishing net in Port Phillip Bay; and

(c) the determination of which of the holders of a Western Port/Port Phillip Bay Fishery Access Licence may retain their licence on and after 1 April 2022; and

(d) the amount paid under section 153E(2) to the holders of a Western Port/Port Phillip Bay Fishery Access Licence who retain their licence on an after 1 April 2022; and

S. 153J(2)(e) amended by No. 68/2016 s. 149(a).

(e) the cancellation by the Secretary or the Victorian Fisheries Authority of a licence

following an election by the licence holder to surrender their licence; and

S. 153J(2)(f) amended by No. 68/2016 s. 149(b).

(f) the cancellation by the Victorian Fisheries Authority of a licence after 1 April 2021; and

(g) the determination, in accordance with section 153I, of the amounts payable to a licence holder whose licence is cancelled.

S. 153K inserted by No. 64/2015 s. 5, amended by No. 68/2016 s. 150.

153K Delegation

The Victorian Fisheries Authority by instrument may delegate any power, duty or function of the Victorian Fisheries Authority under this Division or Schedule 4, other than this power of delegation, to any person including a body corporate.

S. 153L inserted by No. 64/2015 s. 5.

153L Transfer of licence

(1) A holder of a Western Port/Port Phillip Bay Fishery Access Licence who has made a successful election to retain their licence on and after 1 April 2022 may, in accordance with this Act and the regulations, transfer the licence to another person before that date.

(2) Any reference in this Division or Schedule 4 to a licence holder who is entitled to retain a Western Port/Port Phillip Bay Fishery Access Licence on or after 1 April 2022 is taken to include a reference to any person to whom the licence is transferred before that date.

Pt 8 Div. 6 (Heading and ss 153M–153T) inserted by No. 35/2019 s. 6.

Division 6—Cancellation of Gippsland Lakes Fishery Access Licences

S. 153M inserted by No. 35/2019 s. 6.

153M Definitions for this Division

In this Division—

Gippsland Lakes Fishery Access Licence means a licence belonging to the class of access licence of that name prescribed in the regulations made for the purposes of section 38;

licence holder means the holder of a Gippsland Lakes Fishery Access Licence.

S. 153N inserted by No. 35/2019 s. 6.

153N Licence holder may elect to surrender Gippsland Lakes Fishery Access Licence

(1) The holder of a Gippsland Lakes Fishery Access Licence may elect to surrender their licence before 1 April 2020.

(2) The procedure by which a licence holder may elect to surrender their licence is set out in Part 2 of Schedule 5.

S. 153O inserted by No. 35/2019 s. 6.

153O Cancellation of Gippsland Lakes Fishery Access Licences on 1 April 2020

A Gippsland Lakes Fishery Access Licence that has been successfully surrendered in accordance with Part 2 of Schedule 5 is cancelled by virtue of this section on 1 April 2020.

S. 153P inserted by No. 35/2019 s. 6.

153P Cancellation of Gippsland Lakes Fishery Access Licences on 1 April 2021

A Gippsland Lakes Fishery Access Licence that has not been cancelled by virtue of section 153O is cancelled by virtue of this section on 1 April 2021.

S. 153Q inserted by No. 35/2019 s. 6.

153Q Rights and privileges against State extinguished

Any right or privilege acquired or accrued against the State of Victoria in respect of a Gippsland Lakes Fishery Access Licence cancelled under this Division is extinguished, despite anything to the contrary in section 14(2) of the **Interpretation of Legislation Act 1984**.

S. 153R inserted by No. 35/2019 s. 6.

153R State not liable

Despite any Act or law to the contrary (other than the Charter of Human Rights and Responsibilities) and except as provided in this Division, the State of Victoria is not liable in any way for any loss, damage or injury whatsoever resulting directly or indirectly from or arising out of the cancellation of a Gippsland Lakes Fishery Access Licence under this Division and any action taken or decision made under this Division or Schedule 5.

S. 153S inserted by No. 35/2019 s. 6.

153S Compensation for cancellation of licences

(1) A licence holder whose licence is cancelled under this Division is only entitled to be paid compensation calculated in accordance with, and limited to, Part 3 of Schedule 5.

(2) The compensation is to be paid out of the Consolidated Fund (which, by this section, is appropriated to the extent necessary).

S. 153T inserted by No. 35/2019 s. 6.

153T Exemption from offence relating to possession of commercial fishing equipment

(1) A person is exempt from section 36(2) in respect of the possession of commercial fishing equipment if—

(a) the person formerly held a Gippsland Lakes Fishery Access Licence that was cancelled on 1 April 2020—for a period of 12 months after that date; or

(b) the person formerly held a Gippsland Lakes Fishery Access Licence that was cancelled on 1 April 2021—for a period of 12 months after that date.

(2) An exemption under subsection (1) does not apply to a person unless—

(a) the person possessed the commercial fishing equipment in the course of carrying out

activities under a Gippsland Lakes Fishery Access Licence before it was cancelled under this Division; and

(b) the person has evidence of the person's ownership of the commercial fishing equipment immediately before 1 April 2020 or 1 April 2021 (as the case requires).

Part 9—Consequential and transitional

154 Repeal of Fisheries Act 1968 and savings

(1) The **Fisheries Act 1968** is **repealed**.

(2) Any reference in any Act, regulation, local law, subordinate instrument or other document whatsoever to the **Fisheries Act 1968** is to be construed as a reference to the **Fisheries Act 1995**, unless the contrary intention appears.

(3) Except as in this Act expressly or by necessary implication provided—

(a) all persons, things and circumstances appointed or created by or under the **Fisheries Act 1968** or existing or continuing under that Act immediately before the commencement of this section shall under and subject to this Act continue to have the same status, operation and effect as they respectively would have had if this Act had not been enacted; and

S. 154(3)(b) amended by No. 5/1997 s. 50(1)(s).

(b) in particular and without affecting the generality of paragraph (a), this Act shall not disturb the continuity, status, operation or effect of any proclamation, order, Order in Council, determination, declaration, notice, Offshore Constitutional Settlement Arrangement, exemption, approval, appointment, application, grant, revocation, suspension, condition, certificate, licence, permit, registration, consent, authority, proceeding, action, appeal, liability, right or other matter or thing made, done, effected, obtained, issued, granted, given, prescribed, fixed, accrued, incurred, acquired, existing or continuing before the commencement of this section under the **Fisheries Act 1968**.

S. 155 substituted by No. 5/1997 s. 45.

155 Saving of existing licences and permits after repeal

(1) Despite the repeal of the **Fisheries Act 1968**, any licence, registration or permit that is in force immediately before the commencement of section 154 continues in force until—

(a) it expires; or

(b) it is replaced by a fishery licence or a registration or permit issued under this Act—

whichever occurs first.

(2) Despite the repeal of the **Fisheries Act 1968**, a licence, registration or permit which is in force immediately before the commencement of section 154 may be renewed once as if that Act had not been repealed.

(3) For the purposes of this section, the **Fisheries Act 1968** continues to apply in respect of licences, registrations and permits continued in force by subsection (1) (or renewed under subsection (2)) as if it had not been repealed and any regulations, fisheries notice or other instrument under the **Fisheries Act 1968** having effect for the purposes of such licences, registrations and permits also continue to apply.

(4) The Governor in Council may for the purposes of this section by notice published in the Government Gazette specify—

(a) an appointed day in respect of all existing licences, registrations and permits under the **Fisheries Act 1968**; or

(b) an appointed day in respect of—

(i) each specified category of licences, registrations and permits under the **Fisheries Act 1968**; or

(ii) specified classes or groups within those categories.

S. 155A inserted by No. 5/1997 s. 45.

155A Conversion of existing licences

Subject to section 155B, on the relevant appointed day (or as soon as is practicable after that day)—

(a) the holder of a master fisherman's licence under section 13 of the **Fisheries Act 1968** is entitled to be issued with an access licence that has entitlements equivalent to those that applied to the licence immediately before the relevant appointed day, but is not entitled to an access licence in respect of a fishery for which a boat is licensed under section 14 of the **Fisheries Act 1968** (except in accordance with paragraph (b));

(b) the person for the time being registered as the owner of a registered fishing boat that is licensed under section 14 of the **Fisheries Act 1968** is entitled to be issued, in respect of each fishery for which the boat is licensed, with an access licence that has entitlements equivalent to those that applied to the licence immediately before the relevant appointed day;

(c) the holder of a declared abalone licence under section 13A or a new abalone licence under section 13B of the **Fisheries Act 1968** is entitled to be issued with an access licence —

(i) that authorises (in accordance with this Act) either the holder or a person approved by the Secretary to take abalone; and

(ii) that otherwise has entitlements equivalent to those that applied to the licence immediately before the relevant appointed day;

(d) the holder of a bait licence under section 13 of the **Fisheries Act 1968** is entitled to be issued with an access licence that has entitlements equivalent to those that applied to the licence immediately before the relevant appointed day;

(e) the holder of an abalone processor's licence or an abalone storer's licence under section 13 of the **Fisheries Act 1968** is entitled to be issued with a fish receiver's licence that has entitlements equivalent to those that applied to the licence immediately before the relevant appointed day;

(f) the holder of a consolidated master fisherman's licence or a master fisherman's licence under section 13AA of the **Fisheries Act 1968** is entitled to be issued with an access licence that has entitlements equivalent to those that applied to the licence immediately before the relevant appointed day;

(g) the holder of a fish-culture permit under section 25 of the **Fisheries Act 1968** is entitled to be issued with an aquaculture licence—

S. 155A(g)(i) amended by No. 35/2019 s. 8(12).

(i) that has a duration of not more than one year; and

(ii) that otherwise has entitlements equivalent to those that applied to the permit immediately before the relevant appointed day.

(h) the holder of a processor's licence under section 13 of the **Fisheries Act 1968** who was processing scallops immediately before the relevant appointed day is entitled to be issued with a fish receiver's licence that has entitlements equivalent to those that applied to the licence immediately before the relevant appointed day.

S. 155B inserted by No. 5/1997 s. 45.

155B Beneficial owners of abalone licences may seek new licence

(1) The beneficial owner of a declared abalone licence under section 13A or a new abalone licence under section 13B of the **Fisheries Act 1968** may apply to the Secretary at least 90 days before the relevant appointed day to be issued on the appointed day with an access licence —

(a) that authorises (in accordance with this Act) either the owner or a person approved by the Secretary to take abalone; and

(b) that otherwise has entitlements equivalent to those that applied to the licence immediately before the relevant appointed day.

(2) An application must be accompanied by—

(a) evidence in support of the claim of beneficial ownership; and

(b) any other information required by the Secretary.

(3) Upon receipt of an application, the Secretary must notify—

(a) the relevant licence holder; and

(b) any holder of a prescribed financial interest registered under section 14A of the **Fisheries Act 1968** of the application.

(4) The licence holder and each holder of a prescribed financial interest must within 30 days of receiving the notice advise the Secretary in writing of their approval or disapproval of the proposed issue of an access licence to the beneficial owner.

(5) If a person does not give the Secretary the advice required by subsection (4) within the 30 days, the person is deemed to have disapproved of the proposed issue of that licence to the beneficial owner.

(6) If the licence holder and all the holders of a prescribed financial interest in the licence have not approved of the proposed issue of an access licence, the Secretary must not grant the application by the beneficial owner.

(7) The Secretary may refuse to grant an application if—

(a) the claimed beneficial ownership is not bona fide; or

(b) the applicant is not a fit and proper person; or

(c) if the applicant is a corporation, the applicant's nominee or any person in effective control of the corporation is not a fit and proper person.

(8) In considering an application, the Secretary—

(a) may refer the matter to the Commercial Fisheries Licensing Panel for advice; and

(b) must have regard to any recommendations made by the Panel.

(9) The Secretary must not issue a licence or permit under this section unless the Secretary is satisfied that—

(a) the holder or beneficial owner of the licence or permit satisfies the requirements of this section; and

(b) the issue of the licence or permit is consistent with the requirements of this section.

(10) Despite anything to the contrary in section 155A(c) and subsection (1), the Secretary may only issue one access licence in respect of each declared abalone licence under section 13A and each new abalone licence under section 13B of the **Fisheries Act 1968**.

(11) If—

(a) more than one person who is entitled to, or who is entitled to apply for the issue of, a licence under this section applies for the licence; and

(b) they do not agree as to who the licence should be issued—

the Secretary must issue the licence to the licence holder pending the resolution of the dispute.

S. 155C inserted by No. 5/1997 s. 45.

155C Transitional regulations

Regulations under this Act may include savings, transitional or consequential provisions to facilitate the operation of this Part and the transition from the **Fisheries Act 1968** to the **Fisheries Act 1995**.

S. 155D inserted by No. 5/1997 s. 45.

155D Right to licence lapses if licence not renewed

A failure to renew any replacement licence issued under this Part within 30 days of the licence expiring extinguishes any rights a person may have under this Part in respect of the licence.

156 Transitional provision—appeals on section 155A or 155B decision

S. 156(1) amended by No. 5/1997 s. 50(1)(t)(i).

(1) A person who is aggrieved by a decision of the Secretary in respect of an application under section 155B may appeal to the Licensing Appeals Tribunal in accordance with section 136 as if the decision were a reviewable decision within the meaning of section 137.

S. 156(2) amended by No. 5/1997 s. 50(1)(t)(ii).

(2) A person who is aggrieved by a decision under section 155A, may apply in writing to the Secretary for a review of the decision within 14 days of being notified of the decision.

(3) An application under subsection (2) must—

(a) state the grounds for the application; and

(b) be accompanied by any supporting documents or any other documents that the Secretary may subsequently require.

(4) The Secretary may after receiving an application under subsection (2)—

(a) review the decision personally; or

(b) appoint a person or persons to review the decision and report to the Secretary.

(5) A review under subsection (4) is to consist of a review of all the relevant documents only.

(6) A review must be completed within 28 days of receiving the application or of receiving other documents requested under subsection (3).

(7) The Secretary must notify the applicant in writing of the decision of the Secretary on the review.

S. 157 substituted by No. 5/1997 s. 46.

157 Transitional provision—sections 13A, 13AA and 13C of the Fisheries Act 1968

Despite the repeal of the **Fisheries Act 1968**, and without limiting section 155(2)—

(a) sections 13AA(2), (5), (6), (8), (9), (10), (14), (15) and (16) of the **Fisheries Act 1968** continue to apply to a fishery affected by those sections until a Ministerial direction applicable to that fishery is made; and

(b) sections 13A(1) and 13C(1), (3), (4), (5), (6), (7), (8) and (9) of the **Fisheries Act 1968** continue to apply to the abalone fishery until an order applicable to that fishery is made under section 64.

158 Transitional provision—eligibility criteria

S. 158(1) amended by No. 5/1997 ss 47(1)(a), 50(1)(u).

(1) Notwithstanding the repeal of the **Fisheries Act 1968** and subject to subsection (2), the holder of an access licence issued under section 155A continues to be subject to the eligibility criteria applicable to his or her master fisherman's licence, declared abalone licence or boat licence (as the case requires) in force immediately before the commencement of that section for a period of—

S. 158(1)(a) repealed by No. 5/1997 s. 47(1)(b).

* * * * *

(b) in the case of a holder of an access licence, 5 years—

from the relevant appointed day.

S. 158(2) amended by No. 5/1997 s. 50(1)(u).

(2) The holder of an access licence issued under section 155A of this Act is not required to submit to a medical examination in respect of that access licence.

S. 158A inserted by No. 5/1997 s. 48.

158A Transitional provision—issue of licences

(1) This section applies to any licence issued to a person under this Act to replace a licence held by the person under the **Fisheries Act 1968**.

(2) Despite anything to the contrary in this Act or the **Fisheries Act 1968**, the licence continues in force for the period specified on the licence by the Secretary, which must not be a period of more than 1 year.

S. 159 amended by No. 5/1997 s. 47(2)(a)(b), repealed by No. 108/2003 s. 46.

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Ss 160, 161 repealed by No. 29/2011 s. 3(Sch. 1 item 39.3).

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S. 162 amended by No. 5/1997 s. 49, repealed by No. 29/2011 s. 3(Sch. 1 item 39.3).

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S. 163 repealed by No. 29/2011 s. 3(Sch. 1 item 39.3).

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S. 163A inserted by No. 35/2009 s. 74.

163A Transitional provision—Primary Industries Legislation Amendment Act 2009—References to *fish receiver licence*

No matter, act or thing is affected by the amendments made to this Act by sections 50(4), 50(6), 55, 56(1), 56(2), 58(1) and 61(3) of the **Primary Industries Legislation Amendment Act 2009**.

S. 163B inserted by No. 35/2009 s. 46 (as amended by No. 36/2009 s. 4).

163B Transitional and savings provisions—Primary Industries Legislation Amendment Act 2009

(1) On the commencement day the Fisheries Co-Management Council and any fishery committee is abolished and its members go out of office.

(2) Despite the repeal of Part 6 by section 36 of the **Primary Industries Legislation Amendment Act 2009**, section 92 as in force immediately before the commencement day continues to apply in respect of the requirement to submit a report to the Minister, but the report needs only to contain the statement described in section 92(2)(c).

(3) On the commencement day the Fisheries Revenue Allocation Committee is abolished and its members go out of office.

(4) Despite section 39 of the **Primary Industries Legislation Amendment Act 2009**, section 142 as in force immediately before the commencement day continues to apply to the performance of a function or the exercise of a power under this Act immediately before the commencement day by a member of the Fisheries Co-Management Council or a fishery committee.

(5) Despite the amendment made by section 43 of the **Primary Industries Legislation Amendment Act 2009** to section 151B(3)(b), there may be paid out of the Recreational Fishing Licence Trust

Account any costs and expenses incurred in the administration of the Fisheries Revenue Allocation Committee immediately before the commencement day.

(6) In this section ***commencement day*** means the date of commencement of Division 1 of Part 5 of the **Primary Industries Legislation Amendment Act 2009**.

Note

The provisions establishing the Fisheries Co-Management Council, fishery committees and the Fisheries Revenue Allocation Committee were repealed under sections 36 and 44 of the **Primary Industries Legislation Amendment Act 2009**. These sections and sections 39 and 43 of that Act all commenced on the commencement day.

S. 163C inserted by No. 7/2010 s. 13.

163C Transitional provision—Crimes Legislation Amendment Act 2010

The first report submitted by the Secretary under section 131S(1) after the commencement of section 11 of the **Crimes Legislation Amendment Act 2010** must include the information required by section 131S(1) for any period in the 9 months immediately preceding that commencement, that has not previously been reported on.

S. 163D inserted by No. 21/2011 s. 11.

163D Transitional provisions—Fisheries Amendment Act 2011

(1) Section 129A does not apply in respect of an offence committed before the commencement of section 9 of the **Fisheries Amendment Act 2011**.

(2) Section 130AA does not apply in respect of an offence committed before the commencement of section 10 of the **Fisheries Amendment Act 2011**.

S. 163E inserted by No. 82/2012 s. 105.

163E Transitional provision—Integrity and Accountability Legislation Amendment Act 2012

(1) If, before the commencement day, the Special Investigations Monitor had not prepared the report required by section 131T for the financial year ending before the commencement day, the Victorian Inspectorate must prepare and transmit the report.

(2) An inspection undertaken by the Special Investigations Monitor under section 131W in the 12 months ending immediately before the commencement day is taken to be an inspection undertaken by the Victorian Inspectorate.

(3) In this section, ***commencement day*** means the day on which section 147 of the **Integrity and Accountability Legislation Amendment Act 2012** comes into operation.

S. 163F inserted by No. 40/2019 s. 38.

163F Transitional provisions—Primary Industries Legislation Amendment Act 2019

(1) Any appeal proceeding of the Licensing Appeals Tribunal in respect of which a hearing has commenced but a determination has not been made before the commencement day is to be determined in accordance with this Act as in force immediately before the commencement day.

(2) In this section—

commencement day means the day on which section 31 of the **Primary Industries Legislation Amendment Act 2019** comes into operation.

Pt 10 (Heading and ss 164–198) inserted by No. 40/2002 s. 27.

Part 10—Transitional provisions—National Parks (Marine National Parks and Marine Sanctuaries) Act 2002

Division 1—General

S. 164 inserted by No. 40/2002 s. 27.

164 Definitions

(1) In this Part—

charter boat operating costs means the costs of—

(a) fuel and labour; and

(b) repairs and maintenance of any boat—

incurred in carrying on the business of being a charter boat operator;

charter boat operator means a person who carries on a business of the operating of trading vessels used to carry passengers for the purpose of taking or attempting to take fish, other than for sale, by the use of recreational fishing equipment;

compensable year means a period of time set out in Column 3 of an item in Table 1;

eligible charter boat operator means a person who has carried on business as a charter boat operator at any time between 1 April 1999 and 31 March 2002 in any part of a park;

eligible rock lobster access licence holder means a person who is the holder of an access licence that is—

(a) a relevant access licence; and

(b) a Rock Lobster Fishery Access Licence within the meaning of regulation 201 of

the Fisheries Regulations 1998;

eligible specified access licence holder means a person who is the holder of an access licence that is—

(a) a relevant access licence; and

(b) a specified access licence;

fishing operating costs means the costs of—

(a) fuel and labour; and

(b) repairs and maintenance of any boat and of any fishing equipment—

incurred in taking or attempting to take fish or fishing bait for sale;

fishing prohibition means the application of subsection (1) of section 45A of the **National Parks Act 1975** to the whole or any part of a park or sanctuary;

licence year means a period of 12 months beginning on 1 April in any calendar year and ending on 31 March in the following calendar year;

Panel means the Compensation Assessment Panel established under section 184(1);

park has the same meaning as ***marine national park*** has in the **National Parks Act 1975**;

prescribed year means a period of time set out in either item 1 or item 2 of Column 3 of Table 2;

relevant access licence means an access licence under the authority of which fish or fishing bait has been taken at any time between 1 April 1999 and 31 March 2002 in any one or more of the following areas—

(a) a part of a park;

(b) a part of a sanctuary described in Part 2, 5, 8 or 11 of Schedule Eight of the **National Parks Act 1975**;

relevant park, in relation to a compensable year, means a park or sanctuary described in Columns 1 and 2 of the item in Table 1 in which the compensable year is set out;

sanctuary has the same meaning as ***marine sanctuary*** has in the **National Parks Act 1975**;

specified access licence means an access licence that is of any one of the following classes of access licence, within the meaning of regulation 201 of the Fisheries Regulations 1998—

(a) Bait (General) Fishery Access Licence;

(b) Corner Inlet Fishery Access Licence;

(c) Ocean Fishery Access Licence;

(d) Port Phillip Bay (Mussel Bait) Fishery Access Licence;

(e) Purse Seine (Ocean) Fishery Access Licence;

(f) Purse Seine (Port Phillip Bay) Fishery Access Licence;

(g) Scallop (Ocean) Fishery Access Licence;

(h) Trawl (Inshore) Fishery Access Licence;

(i) Westernport/Port Phillip Bay Fishery Access Licence;

(j) Wrasse (Ocean) Fishery Access Licence;

Table 1 means Table 1 set out in subsection (2);

Table 2 means Table 2 set out in subsection (3);

S. 164(1) def. of *trading vessel* amended by No. 65/2010 s. 420(Sch. 3 item 7).

trading vessel has the same meaning as in section 3(1) of the **Marine Safety Act 2010**;

Tribunal means the Compensation Appeals Tribunal established under section 190(1);

unregulated land has the same meaning as in section 45A(12) of the **National Parks Act 1975**.

(2) Table 1 has effect for the purposes of this Part—

TABLE 1

Table setting out, in relation to parks and sanctuaries, the periods of time for which there are compensation entitlements for eligible rock lobster access licence holders and eligible specified access licence holders

Items	*Column 1* Names of Parks and Sanctuaries	*Column 2* Parts and Schedule Numbers of **National Parks Act 1975**	*Column 3* Compensable Years
1.	Bunurong Marine National Park	Part 1 of Schedule Seven	16 November 2002 to 31 March 2003
	Churchill Island Marine National Park	Part 3 of Schedule Seven	1 April 2003 to 31 March 2004
	French Island Marine National Park	Part 6 of Schedule Seven	

	Ninety Mile Beach Marine National Park	Part 7 of Schedule Seven	

Items	*Column 1* Names of Parks and Sanctuaries	*Column 2* Parts and Schedule Numbers of **National Parks Act 1975**	*Column 3* Compensable Years
	Point Addis Marine National Park	Part 8 of Schedule Seven	
	Point Hicks Marine National Park	Part 9 of Schedule Seven	
	Port Phillip Heads Marine National Park	Part 10 of Schedule Seven	
	Wilsons Promontory Marine National Park	Part 12 of Schedule Seven	
	Yaringa Marine National Park	Part 13 of Schedule Seven	
	Beware Reef Marine Sanctuary	Part 2 of Schedule Eight	
	Marengo Reefs Marine Sanctuary	Part 5 of Schedule Eight	
	The Arches Marine Sanctuary	Part 11 of Schedule Eight	
2.	All marine national parks	Parts 1 to 13 of Schedule Seven	1 April 2004 to 31 March 2005
	Beware Reef Marine Sanctuary	Part 2 of Schedule Eight	1 April 2005 to 31 March 2006

Items	*Column 1* Names of Parks and Sanctuaries	*Column 2* Parts and Schedule Numbers of **National Parks Act 1975**	*Column 3* Compensable Years
	Marengo Reefs Marine Sanctuary	Part 5 of Schedule Eight	
	The Arches Marine Sanctuary	Part 11 of Schedule Eight	
	Unregulated land in Point Cooke Marine Sanctuary	Part 8 of Schedule Eight, to the extent that it is unregulated land	
3.	Cape Howe Marine National Park	Part 2 of Schedule Seven	1 April 2006 to 31 March 2007
	Corner Inlet Marine National Park	Part 4 of Schedule Seven	
	Discovery Bay Marine National Park	Part 5 of Schedule Seven	
	Twelve Apostles Marine National Park	Part 11 of Schedule Seven	
	Unregulated land in Point Cooke Marine Sanctuary	Part 8 of Schedule Eight, to the extent that it is unregulated land	

(3) Table 2 has effect for the purposes of this Part—

TABLE 2

Table setting out, in relation to parks, the periods of time for which there are compensation entitlements for eligible charter boat operators

Items	*Column 1*	*Column 2*	*Column 3*
	Names of Parks	Parts and Schedule Numbers of **National Parks Act 1975**	Prescribed Years
1.	Bunurong Marine National Park	Part 1 of Schedule Seven	16 November 2002 to 15 November 2003
	Churchill Island Marine National Park	Part 3 of Schedule Seven	16 November 2003 to 15 November 2004
	French Island Marine National Park	Part 6 of Schedule Seven	16 November 2004 to 15 November 2005
	Ninety Mile Beach Marine National Park	Part 7 of Schedule Seven	
	Point Addis Marine National Park	Part 8 of Schedule Seven	
	Point Hicks Marine National Park	Part 9 of Schedule Seven	
	Port Phillip Heads Marine National Park	Part 10 of Schedule Seven	
	Wilsons Promontory Marine National Park	Part 12 of Schedule Seven	
	Yaringa Marine	Part 13 of Schedule Seven	

	National Park

Items	*Column 1* Names of Parks	*Column 2* Parts and Schedule Numbers of **National Parks Act 1975**	*Column 3* Prescribed Years
2.	Cape Howe Marine National Park	Part 2 of Schedule Seven	1 April 2004 to 31 March 2005
	Corner Inlet Marine National Park	Part 4 of Schedule Seven	1 April 2005 to 31 March 2006
	Discovery Bay Marine National Park	Part 5 of Schedule Seven	1 April 2006 to 31 March 2007
	Twelve Apostles Marine National Park	Part 11 of Schedule Seven	

S. 165 inserted by No. 40/2002 s. 27.

165 Compensation only payable to licence holders and permit holders as provided in this Part

(1) Except as provided in this Part, compensation is not payable by the State of Victoria to a person who is, or has been at any time, the holder of—

(a) a fishery licence; or

(b) a general permit under section 49—

for any loss, damage or injury whatsoever resulting from or arising out of—

S. 165(1)(c) amended by No. 97/2003 s. 11(a).

(c) the enactment of the **National Parks (Marine National Parks and Marine Sanctuaries) Act 2002** or the **Forests and National Parks Acts (Amendment) Act 2003**; or

S. 165(1)(d) amended by No. 97/2003 s. 11(b)(i)(ii).

(d) the existence of any marine national park or marine sanctuary (within the meaning of the **National Parks Act 1975**) as effected by the operation of the **National Parks (Marine National Parks and Marine Sanctuaries) Act 2002** or the **Forests and National Parks Acts (Amendment) Act 2003**.

(2) Nothing in this section prevents any proceeding to recover damages for any loss, damage or injury whatsoever resulting from or arising out of any person negligently or unlawfully exercising, purporting to exercise or failing to exercise any power, duty or authority conferred by or under this Act or the **National Parks Act 1975**.

S. 166 inserted by No. 40/2002 s. 27.

166 Certificate for purposes of evidence

In any proceedings under this Part, a certificate purporting to be signed by the Secretary, stating that fish or fishing bait was taken for sale in the area set out in the certificate, during the period set out in the certificate, is evidence of the facts stated in it.

Division 2—Entitlements for eligible rock lobster access licence holders

S. 167 inserted by No. 40/2002 s. 27.

167 Reduced catch entitlements—eligible rock lobster access licence holders

(1) If, in a compensable year—

(a) an eligible rock lobster access licence holder has failed to take the whole or any part of the licence quota of that licence as at the end of 31 March in that compensable year (in this subsection called the "licence quota not taken"); and

(b) the whole or a part of the licence quota not taken can reasonably be attributed to the fishing prohibition applying to any one or more relevant parks—

the licence holder is entitled to be paid an amount determined in accordance with the following formula—

$$W \times X \times \left(1 - \frac{Y}{Z}\right)$$

where—

W is the whole or the part of the licence quota not taken that can reasonably be attributed to the fishing prohibition so applying; and

X is the estimated averaged beach price obtained by the licence holder for rock lobster taken under the licence for the compensable year; and

Y is the operating costs (not including depreciation) incurred by the licence holder in taking or attempting to take fish under the licence in the financial year ending on the 30 June immediately after the compensable year, other than that part (if any) of the operating costs (not including depreciation) that can reasonably be attributed to the fishing prohibition so applying; and

Z is the gross revenue received by the licence holder in respect of the fish taken under the licence in that financial year.

(2) In this section—

licence quota means the weight of rock lobster that is permitted to be taken under an access licence by virtue of the number of individual quota units that the licence holder holds under this Act in respect of the licence.

S. 168 inserted by No. 40/2002 s. 27.

168 Increased costs entitlements—eligible rock lobster access licence holders

An eligible rock lobster access licence holder is entitled to be paid, for each particular compensable year, an amount that represents the difference between—

(a) the fishing operating costs reasonably incurred under the licence in the particular compensable year; and

(b) the fishing operating costs that would reasonably have been incurred under the licence in the particular compensable year, if the fishing prohibition had not applied to any one or more relevant parks—

if the costs determined under paragraph (a) are greater than the costs determined under paragraph (b).

Division 3—Entitlements for eligible specified access licence holders

S. 169 inserted by No. 40/2002 s. 27.

169 Reduced catch entitlements—eligible specified access licence holders

(1) If in a compensable year—

(a) the total weight of fish (if any) and fishing bait (if any) taken by an eligible specified access licence holder under the licence is less than—

(i) in the case of a compensable year other than the first compensable year, the

averaged annual catch taken under the licence; or

(ii) in the case of the first compensable year, the averaged proportionate catch taken under the licence—

(in this subsection called the "difference in catch"); and

(b) the whole or a part of the difference in catch can reasonably be attributed to the fishing prohibition applying to any one or more relevant parks—

the licence holder is entitled to be paid an amount determined in accordance with the following formula—

$$W \times X \times \left(1 - \frac{Y}{Z}\right)$$

where—

W is the whole or the part of the difference in catch that can reasonably be attributed to the fishing prohibition so applying; and

X is the estimated weighted averaged beach price obtained by the licence holder for the classes of fish (if any) and fishing bait (if any) taken under the licence in the fishery in which the licence holder fished in the compensable year; and

Y is the operating costs (not including depreciation) incurred by the licence holder in taking or attempting to take fish (if any) and fishing bait (if any) under the licence in the financial year, ending on the 30 June immediately after the compensable year, other than that part (if any) of the operating

costs (not including depreciation) that can reasonably be attributed to the fishing prohibition so applying; and

Z is the gross revenue received by the licence holder in respect of the fish (if any) and fishing bait (if any) taken under the licence in that financial year.

(2) In this section—

averaged annual catch means—

(a) in the case of a licence under which any fish or fishing bait was taken in each of the 3 licence years commencing on 1 April 1999 and ending on 31 March 2002 in any one or more relevant parks, the average annual weight of fish (if any) taken and of fishing bait (if any) taken under the licence in the 2 of the 3 years in which the annual weights taken were the highest and the second highest; and

(b) in the case of a licence under which any fish or fishing bait was taken in 2 of the 3 licence years commencing on 1 April 1999 and ending on 31 March 2002 in any one or more relevant parks, the average annual weight of fish (if any) and fishing bait (if any) taken under the licence in those 2 years; and

(c) in the case of a licence under which any fish or fishing bait was taken in 1 of the 3 licence years commencing on 1 April 1999 and ending on 31 March 2002 in any one or more relevant parks, the weight of fish (if any) and fishing bait (if any) taken under the licence in that year;

averaged proportionate catch means—

(a) in the case of a licence under which any fish or fishing bait was taken in the period beginning on 16 November and ending on 31 March in each of the 3 licence years commencing on 1 April 1999 and ending on 31 March 2002 in any one or more relevant parks, the average weight of fish (if any) taken and of fishing bait (if any) taken under the licence in the 2 of the 3 periods in which the weights taken were the highest and the second highest; and

(b) in the case of a licence under which any fish or fishing bait was taken in the period beginning on 16 November and ending on 31 March in 2 of the 3 licence years commencing on 1 April 1999 and ending on 31 March 2002 in any one or more relevant parks, the average weight of fish (if any) and fishing bait (if any) taken under the licence in those 2 periods; and

(c) in the case of a licence under which any fish or fishing bait was taken in the period beginning on 16 November and ending on 31 March in 1 of the 3 licence years commencing on 1 April 1999 and ending on 31 March 2002 in any one or more relevant parks, the weight of fish (if any) and fishing bait (if any) taken under the licence in that period;

first compensable year means the period commencing on 16 November 2002 and ending on 31 March 2003.

S. 170 inserted by No. 40/2002 s. 27.

170 Increased costs entitlements—eligible specified access licence holders

An eligible specified access licence holder is entitled to be paid, for each particular compensable year, an amount that represents the difference between—

(a) the fishing operating costs reasonably incurred under the licence in the particular compensable year; and

(b) the fishing operating costs that would reasonably have been incurred under the licence in the particular compensable year if the fishing prohibition had not applied to any one or more relevant parks—

if the costs determined under paragraph (a) are greater than the costs determined under paragraph (b).

Division 4—Entitlements for eligible charter boat operators

S. 171 inserted by No. 40/2002 s. 27.

171 Increased costs entitlements—eligible charter boat operators

An eligible charter boat operator is entitled to be paid, for each particular prescribed year, an amount that represents the difference between—

(a) the charter boat operating costs reasonably incurred in the particular prescribed year; and

(b) the charter boat operating costs that would reasonably have been incurred in the particular prescribed year, if the fishing prohibition had not applied to any one or more parks described in Columns 1 and 2 of the item in Table 2 in which the prescribed year is set out—

if the costs determined under paragraph (a) are greater than the costs determined under paragraph (b).

Division 5—Determinations of the Panel—eligible rock lobster access licence holders and eligible specified access licence holders

S. 172 inserted by No. 40/2002 s. 27.

172 Application to Panel for determination of interim payment—eligible rock lobster access licence holders and eligible specified access licence holders

(1) An eligible rock lobster access licence holder or an eligible specified access licence holder may, during the course of a particular licence year, apply to the Panel for a determination under section 173.

(2) An application under this section must—

(a) be in the form determined by the Panel and accompanied by the information required by the Panel; and

(b) may be lodged with the Registrar at any time during the course of the licence year in respect of which the application is made.

(3) A licence holder may not make more than one application under this section in any particular licence year.

(4) The Registrar of the Panel must notify an applicant under this section that the application is being considered by the Panel and that the

applicant may request that the application be considered at an oral hearing.

S. 173 inserted by No. 40/2002 s. 27.

173 Determinations of the Panel as to interim payments —eligible rock lobster access licence holders and eligible specified access licence holders

(1) If the Panel is satisfied—

(a) that a person, who has made an application under section 172, is incurring financial hardship in the licence year in respect of which the application is made; and

(b) that the person who has made the application is likely to have an entitlement under—

(i) either or both of sections 167 and 168 for that particular licence year; or

(ii) either or both of sections 169 and 170 for that particular licence year—

the Panel may determine—

(c) the amount that is likely to be that person's entitlement for the particular licence year; and

(d) an amount (being the whole or a part of the amount determined under paragraph (c)) that the Panel believes it is reasonable to pay to the person before the end of the licence year in respect of which the application is made.

(2) An amount that the Panel has determined is to be paid to a person under subsection (1) is a debt owed by the State of Victoria to that person.

(3) A decision on an application under section 172 must be made not later than 30 days after the application is lodged with the Registrar.

(4) On making a decision on an application under section 172 the Panel must notify the applicant and the Secretary in writing of the decision and of its reasons for making the decision.

(5) If—

(a) an application under section 172 has been made to the Panel; and

(b) the time period provided in subsection (3) has elapsed; and

(c) notice of a decision on the application for the determination has not been received by the applicant—

the Panel is deemed to have made, on the day on which the time period elapsed, a decision that the applicant has no entitlement to a payment under this section.

S. 174 inserted by No. 40/2002 s. 27.

174 Application to Panel for determination of final payment—eligible rock lobster access licence holders and eligible specified access licence holders

(1) An eligible rock lobster access licence holder may, for a particular licence year, apply to the Panel for a determination under section 175(1) of any entitlement the licence holder may have under either or both of sections 167 and 168 to a payment for that year.

(2) An eligible specified access licence holder may, for a particular licence year, apply to the Panel for a determination under section 175(1) of any entitlement the licence holder may have under either or both of sections 169 and 170 to a payment for that year.

(3) An application under this section must—

(a) be in the form determined by the Panel and accompanied by the information required by the Panel; and

(b) be lodged with the Registrar of the Panel not later than 30 September after the end of the licence year in respect of which the application has been made.

(4) If the Panel is of the opinion that it is reasonably necessary in all the circumstances, the Panel may allow a person a further 2 weeks after the time specified in subsection (3)(b) in which to lodge an application.

(5) The Registrar of the Panel must notify an applicant under this section that the application is being considered by the Panel and that the applicant may request that the application be considered at an oral hearing.

S. 175 inserted by No. 40/2002 s. 27.

175 Determinations of the Panel as to final payments—eligible rock lobster access licence holders and eligible specified access licence holders

(1) The Panel may determine, for a licence year in respect of which an application has been made under section 174, whether or not the applicant has an entitlement under—

(a) either or both of sections 167 and 168; or

(b) either or both of sections 169 and 170—

and—

(c) in the case of an applicant in respect of whom a determination of an interim payment under section 173 has not been made for the licence year, if the Panel determines that the applicant has an entitlement for that year, the Panel must determine the amount of that entitlement; or

(d) in the case of an applicant in respect of whom a determination of an interim payment under section 173 has been made for the licence year, if the Panel determines that the applicant has an entitlement for that year, the Panel must determine—

(i) the amount of that entitlement; and

(ii) whether or not the amount of the interim payment is greater or less than the amount determined under subparagraph (i).

(2) The Panel, of its own motion, may determine, for a licence year in respect of which a determination of an interim payment under section 173 has been made, whether or not the person in respect of whom the determination has been made has an entitlement under—

(a) either or both of sections 167 and 168 for that year; or

(b) either or both of sections 169 and 170 for that year—

and, if the Panel determines that the applicant has an entitlement for that year, the Panel must determine—

(c) the amount of that entitlement; and

(d) whether or not the amount of the interim payment is greater or less than the amount determined under paragraph (c).

(3) If—

(a) the Panel, under subsection (1)(c), determines an amount that is an entitlement of a person, that amount is a debt owed by the State of Victoria to that person; or

(b) the Panel determines under subsection (1)(d)(ii) or (2)(d) that the amount of the interim payment is less than the amount determined under subsection (1)(d)(i) or (2)(c) (as the case requires), the difference between the two amounts is a debt owed by the State of Victoria to the person in respect of whom the determination has been made; or

(c) the Panel determines under subsection (1)(d)(ii) or (2)(d) that the amount of the interim payment is greater than the amount determined under subsection (1)(d)(i) or (2)(c) (as the case requires), the difference between the two amounts is a debt owed by the person in respect of whom the determination has been made to the State of Victoria.

(4) If the Panel proposes to make a determination under subsection (2), the Registrar of the Panel—

(a) must, at least 30 days before any such determination is made, notify the person in respect of whom the determination is to be made—

(i) that the matter is being considered by the Panel; and

(ii) that the applicant may request that the application be considered at an oral hearing; and

(b) may require the person in respect of whom the determination is to be made to provide the information specified by the Panel.

S. 176 inserted by No. 40/2002 s. 27.

176 Procedures for making determinations of final payments—eligible rock lobster access licence holders and eligible specified access licence holders

(1) A determination under section 175 must be made not later than the 31 March next following the end of the licence year in respect of which the determination is made.

(2) On making a determination under section 175 the Panel must notify the licence holder in respect of whom the determination is made and the Secretary in writing of its determination and of its reasons for making the determination.

(3) If—

(a) an application has been made to the Panel for a determination under section 175; and

(b) the time period provided in subsection (1) has elapsed; and

(c) notice of a decision on the application for the determination has not been received by the applicant—

the Panel is deemed to have made, on the day on which the time period elapsed, a determination that the applicant has no entitlement under this Part.

Division 6—Determinations of the Panel—eligible charter boat operators

S. 177 inserted by No. 40/2002 s. 27.

177 Application to Panel for determination of interim payment—eligible charter boat operators

(1) An eligible charter boat operator may, during the course of any prescribed year, apply to the Panel for a determination under section 178.

(2) An application under this section must—

(a) be in the form determined by the Panel and accompanied by the information required by the Panel; and

(b) may be lodged with the Registrar at any time during the course of the prescribed year in respect of which the application is made.

(3) An eligible charter boat operator may not make more than one application under this section in any prescribed year.

(4) The Registrar of the Panel must notify an applicant under this section that the application is being considered by the Panel and that the applicant may request that the application be considered at an oral hearing.

S. 178 inserted by No. 40/2002 s. 27.

178 Determinations of the Panel as to interim payments —eligible charter boat operators

(1) If the Panel is satisfied—

(a) that, a person, who has made an application under section 177, is incurring financial hardship in the prescribed year in respect of which the application is made; and

(b) that the person who has made the application is likely to have an entitlement under section 171 for that particular prescribed year—

the Panel may determine—

(c) the amount that is likely to be that person's entitlement for the particular prescribed year; and

(d) an amount (being the whole or a part of the amount determined under paragraph (c)) that the Panel believes it is reasonable to pay to the person before the end of the prescribed year in respect of which the application is made.

(2) An amount that the Panel has determined is to be paid to a person under subsection (1) is a debt owed by the State of Victoria to that person.

(3) A decision on an application under section 177 must be made not later than 30 days after the application is lodged with the Registrar.

(4) On making a decision on an application under section 177 the Panel must notify the applicant and the Secretary in writing of the decision and of its reasons for making the decision.

(5) If—

(a) an application under section 177 has been made to the Panel; and

(b) the time period provided in subsection (3) has elapsed; and

(c) notice of a decision on the application for the determination has not been received by the applicant—

the Panel is deemed to have made, on the day on which the time period elapsed, a decision that the applicant has no entitlement to a payment under this section.

S. 179 inserted by No. 40/2002 s. 27.

179 Application to Panel for determination of final payment—eligible charter boat operators

(1) An eligible charter boat operator may, for a particular prescribed year, apply to the Panel for a determination under section 180(1) of any entitlement the eligible charter boat operator may have under section 171 to a payment for that year.

(2) An application under this section must—

(a) be in the form determined by the Panel and accompanied by the information required by the Panel; and

(b) be lodged with the Registrar of the Panel not later than 90 days after the end of the prescribed year in respect of which the application has been made.

(3) If the Panel is of the opinion that it is reasonably necessary in all the circumstances, the Panel may allow a person a further 2 weeks after the time specified in subsection (2)(b) in which to lodge an application.

(4) The Registrar of the Panel must notify an applicant under this section that the application is being considered by the Panel and that the applicant may request that the application be considered at an oral hearing.

S. 180 inserted by No. 40/2002 s. 27.

180 Determinations of the Panel as to final payments—eligible charter boat operators

(1) The Panel may determine, for a prescribed year in respect of which an application has been made under section 179, whether or not the applicant has an entitlement under section 171 and—

(a) in the case of an applicant in respect of whom a determination of an interim payment under section 178 has not been made for the prescribed year, if the Panel determines that the applicant has an entitlement for that year, the Panel must determine the amount of that entitlement; or

(b) in the case of an applicant in respect of whom a determination of an interim payment under section 178 has been made for the prescribed year, if the Panel determines that the applicant has an entitlement for that year, the Panel must determine—

(i) the amount of that entitlement; and

(ii) whether or not the amount of the interim payment is greater or less than the amount determined under subparagraph (i).

(2) The Panel, of its own motion, may determine, for a prescribed year in respect of which a determination of an interim payment under section 178 has been made, whether or not the person in respect of whom the determination has been made has an entitlement under section 171 for that year and, if the Panel determines that the applicant has an entitlement for that year, the Panel must determine—

(a) the amount of that entitlement; and

(b) whether or not the amount of the interim payment is greater or less than the amount determined under paragraph (a).

(3) If—

(a) the Panel, under subsection (1)(a), determines an amount that is an entitlement of a person, that amount is a debt owed by the State of Victoria to that person; or

(b) the Panel determines under subsection (1)(b)(ii) or (2)(b) that the amount of the interim payment is less than the amount determined under subsection (1)(b)(i) or (2)(a) (as the case requires), the difference between the two amounts is a debt owed by the State of Victoria to the person in respect of whom the determination has been made; or

(c) the Panel determines under subsection (1)(b)(ii) or (2)(b) that the amount of the interim payment is greater than the amount

determined under subsection (1)(b)(i) or (2)(a) (as the case requires), the difference between the two amounts is a debt owed by the person in respect of whom the determination has been made to the State of Victoria.

(4) If the Panel proposes to make a determination under subsection (2), the Registrar of the Panel—

(a) must, at least 30 days before making the determination, give the person in respect of whom the determination is to be made, notice of the proposal to make the determination; and

(b) may require the person in respect of whom the determination is to be made to provide the information specified by the Panel.

S. 181 inserted by No. 40/2002 s. 27.

181 Procedures for making determinations of final payments—eligible charter boat operators

(1) A determination under section 180 must be made not later than 180 days after the end of the prescribed year in respect of which the determination is made.

(2) On making a determination under section 180 the Panel must notify the person in respect of whom the determination is made and the Secretary in writing of its determination and of its reasons for making the determination.

(3) If—

(a) an application has been made to the Panel for a determination under section 180; and

(b) the time period provided in subsection (1) has elapsed; and

(c) notice of a decision on the application for the determination has not been received by the applicant—

the Panel is deemed to have made, on the day on which the time period elapsed, a determination that the applicant has no entitlement under this Part.

Division 7—Review of determinations by the Tribunal

S. 182 inserted by No. 40/2002 s. 27.

182 Applications for the Tribunal to review determinations

(1) The Secretary or a person in respect of whom a determination under Division 5 or Division 6 has been made by the Panel may apply to the Tribunal for a review of any such determination.

(2) An application must—

(a) be in writing; and

(b) specify the grounds of the application; and

(c) be lodged with the Registrar of the Tribunal within 30 days of the applicant being given notice of the determination of the Panel or within 30 days of the Panel being deemed to have made the determination (as the case requires).

(3) The Registrar of the Tribunal must notify the applicant of the time and place fixed for the review of the determination.

S. 183 inserted by No. 40/2002 s. 27.

183 Determinations of applications by the Tribunal

(1) After hearing an application for review, the Tribunal may—

(a) affirm the determination; or

(b) vary the determination; or

(c) set aside the determination and make a determination in substitution for the determination.

(2) On making a determination of an application under subsection (1), the Tribunal must notify the applicant and the Secretary in writing of its determination and of its reasons for making the determination.

Division 8—Constitution and proceedings of the Panel

S. 184 inserted by No. 40/2002 s. 27.

184 Compensation Assessment Panel

(1) For the purposes of this Part there is established a Compensation Assessment Panel.

(2) The Panel is to consist of 3 members who are to be appointed by the Minister, being—

(a) a chairperson who has, in the opinion of the Minister, extensive knowledge and experience in any one or more of the following areas, industry, commerce, economics, law or public administration;

S. 184(2)(b) amended by No. 35/2009 s. 47.

(b) one person, selected by the Minister, from a panel of 3 persons associated with and familiar with the fishing industry;

(c) one person who, in the opinion of the Minister, has expertise in financial matters.

(3) A person must not be appointed as a member of the Panel if that person is—

(a) a member or a deputy of the Tribunal; or

(b) an eligible rock lobster access licence holder, an eligible specified access licence holder or an eligible charter boat operator.

(4) The Minister may, at any time, remove a member of the Panel and appoint another member in accordance with subsection (2).

(5) A member is appointed for the term, not exceeding 3 years, that is specified in the instrument of appointment.

(6) A member is eligible for re-appointment.

(7) Subject to this section, a member holds office on those terms and conditions (including as to payment and travel allowances) that are specified in the member's instrument of appointment.

S. 184(8) substituted by Nos 108/2004 s. 117(1) (Sch. 3 item 79.3), 80/2006 s. 26(Sch. item 40.3).

(8) The **Public Administration Act 2004** (other than Part 3 of that Act) applies to a member in respect of the office of member.

S. 185 inserted by No. 40/2002 s. 27.

185 Deputies for members of the Panel

(1) The Minister must appoint as a deputy for each member of the Panel, a person who satisfies the same qualification requirements as those that apply to the member for whom he or she is a deputy.

(2) A person must not be appointed as a deputy for a member of the Panel if that person is—

(a) a member or a deputy of the Tribunal; or

(b) an eligible rock lobster access licence holder, an eligible specified access licence holder or an eligible charter boat operator.

(3) The Minister may, at any time, remove a deputy and appoint another deputy in accordance with subsection (1).

(4) A deputy is appointed for the term, not exceeding 3 years, that is specified in his or her instrument of appointment.

(5) A deputy is eligible for re-appointment.

(6) Subject to this section, a deputy holds office on those terms and conditions (including as to payment and travel allowances) that are specified in his or her instrument of appointment.

S. 185(7) substituted by Nos 108/2004 s. 117(1) (Sch. 3 item 79.4), 80/2006 s. 26(Sch. item 40.4).

(7) The **Public Administration Act 2004** (other than Part 3 of that Act) applies to a deputy in respect of the office of deputy.

(8) A deputy has, while acting in the place of a member, the powers and duties of the member.

S. 186 inserted by No. 40/2002 s. 27.

186 Registrar of the Panel

The Secretary must appoint a person to be the Registrar of the Panel.

S. 187 inserted by No. 40/2002 s. 27.

187 Meetings of the Panel

(1) Subject to subsection (2), meetings of the Panel are to be held at the times and places that the Panel determines.

(2) The chairperson of the Panel may fix meetings of the Panel.

(3) Subject to this section, in any meeting, the Panel may regulate its own procedure.

S. 188 inserted by No. 40/2002 s. 27.

188 Proceedings of the Panel

(1) For the purposes of making a determination under Division 5 or Division 6, the Panel must be constituted by the 3 members of the Panel.

(2) Despite subsection (1), if a member of the Panel is unable to take part in any proceeding under subsection (1) because that member is ill or absent, the deputy of that member may take part in the proceeding in his or her place.

(3) If, after a proceeding has commenced, a person who is part of the Panel for the purposes of that proceeding becomes unable to take part in the proceeding, the chairperson must either—

(a) with the consent of the applicant, arrange for the proceeding to continue, with the deputy of the member who is unable to take part taking that member's place; or

(b) arrange for the proceeding to be reheard with the Panel constituted in accordance with this Division.

S. 189 inserted by No. 40/2002 s. 27.

189 Conducting proceedings of the Panel

(1) In any proceeding of the Panel, the deputy of the chairperson is to preside in the absence of the chairperson.

(2) A determination of the Panel must be made by a majority of the persons conducting the proceeding.

(3) The Panel must give any party to the proceeding —

(a) reasonable notice of the proceeding; and

(b) a reasonable opportunity to be heard.

(4) The Panel, in making any determination—

(a) must act according to the substantial merits of the case and without regard to legal forms and technicalities; and

(b) may proceed and inform itself in any manner it thinks fit and may regulate its own proceedings; and

(c) is bound by the rules of natural justice; and

(d) is not bound by any rule or practice as to evidence.

S. 189(5) amended by No. 18/2005 s. 18(Sch. 1 item 44.2).

(5) A party to any proceeding before the Panel may appear and be heard before the Panel personally or by an Australian lawyer or by a person authorised in that behalf by that party.

Division 9—Constitution and proceedings of the Tribunal

S. 190 inserted by No. 40/2002 s. 27.

190 Compensation Appeals Tribunal

(1) For the purposes of this Part there is established a Compensation Appeals Tribunal.

(2) The Tribunal is to consist of 3 members who are appointed by the Governor in Council, on the recommendation of the Minister, being—

S. 190(2)(a) amended by No. 18/2005 s. 18(Sch. 1 item 44.3).

(a) an Australian lawyer who has knowledge of and experience in administrative law or the law of procedure and evidence, who is to be the chairperson;

S. 190(2)(b) amended by No. 35/2009 s. 48.

(b) one person, nominated by the Minister, from a panel of 3 persons associated with and familiar with the fishing industry;

(c) one person who, in the opinion of the Minister, has expertise in financial matters.

(3) A person must not be appointed as a member of the Tribunal if that person is—

(a) a member or a deputy of the Panel; or

(b) an eligible rock lobster access licence holder, an eligible specified access licence holder or an eligible charter boat operator.

(4) The Governor in Council may, at any time, on the recommendation of the Minister, remove a member of the Tribunal and appoint another member in accordance with subsection (2).

(5) A member is appointed for the term, not exceeding 3 years, that is specified in the instrument of appointment.

(6) A member is eligible for re-appointment.

(7) Subject to this section, a member holds office on those terms and conditions (including as to payment and travel allowances) that are specified in the member's instrument of appointment.

S. 190(8) substituted by Nos 108/2004 s. 117(1) (Sch. 3 item 79.5), 80/2006 s. 26(Sch. item 40.5).

(8) The **Public Administration Act 2004** (other than Part 3 of that Act) applies to a member in respect of the office of member.

S. 191 inserted by No. 40/2002 s. 27.

191 Deputies for members of the Tribunal

(1) The Governor in Council, on the recommendation of the Minister, must appoint as a deputy for each member of the Tribunal, a person who satisfies the same qualification requirements as those that apply to the member for whom he or she is a deputy.

(2) A person must not be appointed as a deputy for a member of the Tribunal if that person is—

(a) a member or a deputy of the Panel; or

(b) an eligible rock lobster access licence holder, an eligible specified access licence holder or an eligible charter boat operator.

(3) The Governor in Council may, at any time, on the recommendation of the Minister, remove a deputy and appoint another deputy in accordance with subsection (1).

(4) A deputy is appointed for the term, not exceeding 3 years, that is specified in his or her instrument of appointment.

(5) A deputy is eligible for re-appointment.

(6) Subject to this section, a deputy holds office on those terms and conditions (including as to payment and travel allowances) that are specified in his or her instrument of appointment.

S. 191(7) substituted by Nos 108/2004 s. 117(1) (Sch. 3 item 79.6), 80/2006 s. 26(Sch. item 40.6).

(7) The **Public Administration Act 2004** (other than Part 3 of that Act) applies to a deputy in respect of the office of deputy.

(8) A deputy has, while acting in the place of a member, the powers and duties of the member.

S. 192 inserted by No. 40/2002 s. 27.

192 Registrar of the Tribunal

The Secretary must appoint a person to be the Registrar of the Tribunal.

S. 193 inserted by No. 40/2002 s. 27.

193 Meetings of the Tribunal

(1) Subject to subsection (2), meetings of the Tribunal are to be held at the times and places that the Tribunal determines.

(2) The chairperson of the Tribunal may fix meetings of the Tribunal.

(3) Subject to this section, in any meeting, the Tribunal may regulate its own procedure.

S. 194 inserted by No. 40/2002 s. 27.

194 Proceedings of the Tribunal

(1) For the purposes of making a determination under section 183 of an application for review, the Tribunal must be constituted by the 3 members of the Tribunal.

(2) Despite subsection (1), if a member of the Tribunal is unable to take part in any proceeding under subsection (1) because that member is ill or absent, the deputy of that member may take part in the proceeding in his or her place.

(3) If, after a proceeding has commenced, a person who is part of the Tribunal for the purposes of that proceeding becomes unable to take part in the proceeding, the chairperson must either—

(a) with the consent of the applicant, arrange for the proceeding to continue, with the deputy of the member who is unable to take part taking that member's place; or

(b) arrange for the proceeding to be reheard with the Tribunal constituted in accordance with this Division.

S. 195 inserted by No. 40/2002 s. 27.

195 Conducting proceedings of the Tribunal

(1) In any proceeding of the Tribunal, the deputy of the chairperson is to preside in the absence of the chairperson.

(2) A determination of an application for review must be made by a majority of the persons hearing the application.

(3) The Tribunal must give any party to the proceeding—

(a) reasonable notice of the proceeding; and

(b) a reasonable opportunity to be heard.

(4) The Tribunal, in determining an application for review—

(a) must act according to the substantial merits of the case and without regard to legal forms and technicalities; and

(b) may proceed and inform itself in any manner it thinks fit and may regulate its own proceedings; and

(c) is bound by the rules of natural justice; and

(d) is not bound by any rule or practice as to evidence.

S. 195(5) amended by No. 18/2005 s. 18(Sch. 1 item 44.4).

(5) A party to any proceeding before the Tribunal may appear and be heard before the Tribunal personally or by an Australian lawyer or by a person authorised in that behalf by that party.

(6) The Tribunal may, on the application of the applicant, order that the determination or the operation or implementation of the determination to which the application for review relates, be stayed pending the determination of the application for review, if the Tribunal considers that it is desirable to do so after taking into account the interests of any person who may be affected by the application for review.

(7) For the purposes of subsection (6), an application to stay a determination, or the operation or implementation of a determination, may, with the consent of the applicant for review, be heard and determined by the chairperson sitting alone.

Division 10—Annual reports on fisheries

S. 196 inserted by No. 40/2002 s. 27.

196 Annual reports on fisheries to be prepared

(1) The Minister must, after the expiry of each of the relevant licence years, cause to be prepared a report assessing the condition of each of the following fisheries—

(a) the abalone fishery;

(b) the rock lobster fishery;

(c) any other fishery for which a specified access licence applies.

(2) In subsection (1) ***relevant licence years*** means the licence years ending on 31 March 2003, 31 March 2004, 31 March 2005, 31 March 2006 and 31 March 2007.

S. 197 inserted by No. 40/2002 s. 27.

197 Tabling of annual reports on fisheries

The Minister must cause each report prepared under section 196 to be laid before each House of Parliament by 30 November next following the end of the licence year for which the report has been prepared, or, if either House is not then sitting, within 5 sitting days of that House after that date.

S. 198 inserted by No. 40/2002 s. 27.

198 Minister to have regard to reports

In exercising his or her powers, functions and duties under this Act, the Minister must have regard to reports prepared under section 196.

Pt 10A (Heading and ss 198A–198ZD) inserted by No. 68/2016 s. 151.

Part 10A—Transitional provisions—Victorian Fisheries Authority Act 2016

S. 198A inserted by No. 68/2016 s. 151.

198A Definition

In this Part, ***commencement day*** means the day on which section 3 of the **Victorian Fisheries Authority Act 2016** comes into operation.

S. 198B inserted by No. 68/2016 s. 151.

198B Transitional provision for power to enter into agreements under section 13

On and after the commencement day—

(a) any powers, duties or functions that have been conferred on the Secretary by or under section 13 or an agreement made under section 13, as in effect immediately before the commencement day, are taken to be conferred on the Victorian Fisheries Authority; and

(b) a reference in an agreement referred to in paragraph (a) to the Secretary is taken to be a reference to the Victorian Fisheries Authority; and

(c) any agreement referred to in paragraph (a) has effect as if the Victorian Fisheries Authority had always been a party to the agreement.

S. 198C inserted by No. 68/2016 s. 151.

198C Transitional provision for power to enter into agreements under section 26

On and after the commencement day—

(a) any powers, duties or functions that have been conferred on the Secretary by or under

section 26 or an agreement made under section 26, as in effect immediately before the commencement day, are taken to be conferred on the Victorian Fisheries Authority; and

(b) a reference in any agreement referred to in paragraph (a) to the Secretary is taken to be a reference to the Victorian Fisheries Authority; and

(c) an agreement referred to in paragraph (a) has effect as if the Victorian Fisheries Authority had always been a party to the agreement.

S. 198D inserted by No. 68/2016 s. 151.

198D Transitional provision for access licences

(1) This section applies if, before the commencement day—

(a) a personal representative has made an application to the Secretary under section 38(7)(d); and

(b) the Secretary has not made a decision to refuse or grant the application.

(2) On and after the commencement day, the Victorian Fisheries Authority, on the recommendation of the Commercial Fisheries Licensing Panel, must determine the application.

S. 198E inserted by No. 68/2016 s. 151.

198E Transitional provision for fishery licences

(1) This section applies if, immediately before the commencement day—

(a) a person has made an application to the Secretary under section 51; and

(b) the Secretary has not made a decision to refuse or grant the application.

(2) On and after the commencement day, the Victorian Fisheries Authority must determine the application.

S. 198F inserted by No. 68/2016 s. 151.

198F Transitional provision for changes to licence or permit conditions

(1) This section applies if, before the commencement day—

(a) the holder of a licence or permit has made an application to the Secretary under section 54(2)(b); and

(b) the Secretary has not made a decision to refuse or grant the application.

(2) On and after the commencement day, the Victorian Fisheries Authority must determine the application.

S. 198G inserted by No. 68/2016 s. 151.

198G Transitional provision for transfer of licences

(1) This section applies if, before the commencement day—

(a) the holder of a licence or a registered financial interest in the licence, together with the proposed transferee, have made an application to the Secretary under section 56(2); and

(b) the Secretary has not made a decision to refuse or grant the application.

(2) On and after the commencement day, the Victorian Fisheries Authority must determine the application.

S. 198H inserted by No. 68/2016 s. 151.

198H Transitional provision for licence renewal

(1) This section applies if, before the commencement day—

(a) the holder of an access licence, a fish receiver licence or any prescribed class of renewable licence has made an application to the Secretary under section 57(1); and

(b) the Secretary has not made a decision to refuse or grant the application.

(2) On and after the commencement day, the Victorian Fisheries Authority must determine the application.

S. 198I inserted by No. 68/2016 s. 151.

198I Transitional provision for costs of failure to comply with a removal notice on cessation of aquaculture activities

(1) This section applies if, before the commencement day, the Secretary has incurred reasonable costs and expenses as a result of the failure of a person to comply with a notice under section 60A(2), as in force immediately before the commencement day.

(2) On and from the commencement day—

(a) any amount unpaid is a debt due and payable to the Secretary; and

(b) section 60A(7) and (8), as in force immediately before the commencement day, continue to apply in respect of that amount.

S. 198J inserted by No. 68/2016 s. 151.

198J Transitional provision for transfer of individual quota units

(1) This section applies if, before the commencement day—

(a) the holder of an access licence in a quota fishery has made an application to the Secretary under section 65A(2); and

(b) the Secretary has not made a decision to refuse or grant the application.

(2) On and after the commencement day, the Victorian Fisheries Authority must determine the application.

S. 198K inserted by No. 68/2016 s. 151.

198K Transitional provision for abalone quota unit holding statement

(1) This section applies if, before the commencement day—

(a) the holder of an individual abalone quota unit has made an application to the Secretary under section 66H(2) and paid the prescribed fee; and

(b) the Secretary has not provided a copy of the relevant abalone quota unit holding statement.

(2) On and after the commencement day, the Victorian Fisheries Authority must determine the application.

S. 198L inserted by No. 68/2016 s. 151.

198L Transitional provision for abalone quota unit holding statement

(1) This section applies if, before the commencement day—

(a) the holder of an individual abalone quota unit has made an application to the Secretary under section 66K(2); and

(b) the Secretary has not made a decision to refuse or grant the application.

(2) On and after the commencement day, the Victorian Fisheries Authority must determine the application.

S. 198M inserted by No. 68/2016 s. 151.

198M Transitional provision for protected aquatic biota permits

(1) This section applies if, before the commencement day—

(a) a person has made an application to the Secretary for a permit to take, injure, damage, destroy, possess, keep, display for reward, release into Victorian waters or sell protected aquatic biota under

section 72(1)(a) and paid the prescribed fee; and

(b) the Secretary has not made a decision to refuse or grant the application.

(2) On and after the commencement day, the Victorian Fisheries Authority must determine the application.

S. 198N inserted by No. 68/2016 s. 151.

198N Transitional provision for noxious aquatic species permits

(1) This section applies if, before the commencement day—

(a) a person has made an application for a noxious aquatic species permit under section 81; and

(b) the Secretary has not made a decision to refuse or grant the application.

(2) On and after the commencement day, the Victorian Fisheries Authority must determine the application.

S. 198O inserted by No. 68/2016 s. 151.

198O Transitional provision for recovery of costs of seizure and removal of noxious aquatic species

(1) This section applies if, before the commencement day, an authorised officer has reasonably incurred costs or expenses in carrying out measures specified in a notice under section 85(2).

(2) On and from the commencement day—

(a) any amount unpaid is a debt due and payable to the Secretary; and

(b) section 85(3), as in force immediately before the commencement day, continues to apply in respect of that amount.

S. 198P inserted by No. 68/2016 s. 151.

198P Transitional provision for prevention of spread of aquatic noxious species

(1) This section applies if, before the commencement day—

(a) the Secretary has, under section 86, taken action to delay or prevent the spread of noxious aquatic species from the waters in which it is established to other waters; and

(b) the Secretary is not satisfied that the action is concluded.

(2) On and from the commencement day, section 86 continues to apply as in force immediately before the commencement day until the Secretary is satisfied that the action is concluded.

S. 198Q inserted by No. 68/2016 s. 151.

198Q Transitional provision for provisions applying to fisheries reserves

(1) On and after the commencement day, any power, duty or function conferred upon the Secretary by an Order in Council made under section 89, as in effect immediately before the commencement day, is taken to be conferred on the Victorian Fisheries Authority.

(2) An Order in Council to which subsection (1) applies may be varied or revoked as if it were an Order in Council made under section 89.

S. 198R inserted by No. 68/2016 s. 151.

198R Transitional provision for security for return of thing seized

(1) This section applies if, before the commencement day—

(a) the Secretary has authorised under section 106(2) the return of a thing seized on condition that the person give security to the Secretary for payment of the value of the thing if it is forfeited; and

(b) the security has not been given.

(2) On and after the commencement day, section 106(2) continues to apply as in force immediately before the commencement day until the person has given the security to the Secretary.

S. 198S inserted by No. 68/2016 s. 151.

198S Transitional provision for claims by Secretary for return of things seized

(1) This section applies if, before the commencement day—

(a) the Secretary has begun to take reasonable steps under section 106(7) to return a seized thing to its owner; and

(b) the Secretary is not satisfied that all reasonable steps have been taken.

(2) On and after the commencement day, section 106(7) continues to apply as in force immediately before the commencement day until the Secretary is satisfied that all reasonable steps have been taken.

S. 198T inserted by No. 68/2016 s. 151.

198T Transitional provision for claim for return of thing seized by Secretary

(1) This section applies if, before the commencement day—

(a) a person to whom a disposal notice is given has made a claim to the Secretary under section 106AC for return of the thing seized and described in the notice; and

(b) the claim has not been determined.

(2) On and after the commencement day, the chief executive officer must determine the claim.

S. 198U inserted by No. 68/2016 s. 151.

198U Transitional provision for applications for condemnation orders

(1) This section applies if, before the commencement day—

(a) the Secretary has made an application under section 106AE(1); and

(b) the application has not been determined.

(2) On and from the commencement day, section 106AE continues to apply as in force immediately before the commencement day until the court determines the application.

S. 198V inserted by No. 68/2016 s. 151.

198V Transitional provision for costs incurred in removing obstruction

(1) This section applies if, before the commencement day, the Secretary has incurred costs under section 119 in removing an obstruction.

(2) On and from the commencement day—

(a) any amount unpaid is a debt due and payable to the Secretary; and

(b) section 119(3), as in force immediately before the commencement day, continues to apply in respect of that amount.

S. 198W inserted by No. 68/2016 s. 151.

198W Transitional provision for court orders for offenders to take specified actions

(1) This section applies if, before the commencement day—

(a) the Secretary has done anything under section 129A(5) or (7) to carry out an action that remains to be done under a court order; and

(b) the Secretary is not satisfied that the order has been complied with.

(2) On and from the commencement day, section 129A(5) and (7) continues to apply as in force immediately before the commencement day until the Secretary is satisfied that the order is complied with.

S. 198X inserted by No. 68/2016 s. 151.

198X Transitional provision for court orders for offenders to take specified actions

(1) This section applies if, before the commencement day, the Secretary has incurred costs in taking action under section 129A(5) or (7).

(2) On and from the commencement day—

(a) any amount unpaid is a debt due and payable to the Secretary; and

(b) section 129A(9), as in force immediately before the commencement day, continues to apply in respect of that amount.

S. 198Y inserted by No. 68/2016 s. 151.

198Y Transitional provision for further prohibition court orders

(1) This section applies if, before the commencement day—

(a) the Secretary has made an application under section 130A(2) for an order prohibiting a person from engaging in a specified fishing activity or being in the possession of a specified fish or fishing equipment; and

(b) the application has not been determined.

(2) On and from the commencement day, section 130A(2) continues to apply as in force immediately before the commencement day until the court determines the application.

S. 198Z inserted by No. 68/2016 s. 151.

198Z Transitional provision for prohibition to be in or on specified waters

(1) This section applies if, before the commencement day—

(a) the Secretary has made an application under section 130B(2) for an order prohibiting a person from being in or on specified Victorian waters without a lawful purpose; and

(b) the application has not been determined.

(2) On and from the commencement day, section 130B(2) continues to apply as in force immediately before the commencement day until the court determines the application.

S. 198ZA inserted by No. 68/2016 s. 151.

198ZA Transitional provision for applications for authorities to conduct controlled operations

(1) This section applies if, before the commencement day—

(a) the proposed principal law enforcement officer for a controlled operation has made an application to the Secretary under section 131C(1); and

(b) the Secretary has not made a decision to refuse or grant the application.

(2) On and after the commencement day, the chief executive officer must determine the application.

S. 198ZB inserted by No. 68/2016 s. 151.

198ZB Transitional provision for application for variation of authority

(1) This section applies if, before the commencement day—

(a) the principal law enforcement officer for a controlled operation, or any other law enforcement officer on behalf of the principal law enforcement officer, has

made an application to the Secretary under section 131H(1); and

(b) the Secretary has not made a decision to refuse or grant the application.

(2) On and after the commencement day, the chief executive officer must determine the application.

S. 198ZC inserted by No. 68/2016 s. 151.

198ZC Transitional provision for Secretary's reports

(1) This section applies if, before the commencement day—

(a) the Victorian Inspectorate has required the Secretary to furnish information under section 131S(3); and

(b) the information has not been provided.

(2) On and from the commencement day, a requirement for information to which subsection (1) applies is taken to be a requirement made of the chief executive officer.

S. 198ZD inserted by No. 68/2016 s. 151.

198ZD Transitional provision for documents and general register

On and from the commencement day, the Secretary must furnish to the chief executive officer—

(a) all documents required to be kept under section 131U, as in force immediately before the commencement day; and

(b) the general register required to be kept under section 131V, as in force immediately before the commencement day.

Pt 11 (Heading and ss 199–214) inserted by No. 108/2003 s. 47.

Part 11—Determination of disputes

Division 1—Preliminary matters

S. 199 inserted by No. 108/2003 s. 47.

199 Application of this Part

This Part applies to any disputed claim under section 63.

S. 200 inserted by No. 108/2003 s. 47.

200 Definitions

In this Part—

claimant means a person who makes, or is entitled to make, a claim for compensation under section 63;

Court means the Supreme Court;

Tribunal means the Victorian Civil and Administrative Tribunal established by the **Victorian Civil and Administrative Tribunal Act 1998**.

Division 2—Application/referral process

S. 201 inserted by No. 108/2003 s. 47, amended by No. 68/2016 s. 152.

201 Application or referral of disputed claim

The Victorian Fisheries Authority or the claimant may—

(a) apply to the Tribunal for the determination of a disputed claim for compensation in accordance with this Part; or

(b) refer a disputed claim for compensation to the Court for determination in accordance with this Part.

S. 202 inserted by No. 108/2003 s. 47.

202 Jurisdiction

(1) A disputed claim must be determined—

(a) by the Tribunal if the amount in dispute does not exceed $50 000; or

S. 202(1)(b) amended by No. 68/2016 s. 153(1).

(b) if the amount in dispute exceeds $50 000, by the Tribunal or the Court at the option of the claimant or, if the claimant does not exercise that option within 30 days after being requested to do so by the Victorian Fisheries Authority, at the option of the Victorian Fisheries Authority; or

(c) by the Court irrespective of the amount in dispute if the Court is satisfied on the application of any party that the claim raises questions of unusual difficulty or of general importance.

S. 202(2) amended by No. 68/2016 s. 153(2).

(2) In this section ***amount in dispute*** means the amount of the difference between the amount claimed by the claimant and the amount of the final offer made by the Victorian Fisheries Authority before the application is made to the Tribunal in respect of the claim or the matter is referred to the Court under this Part.

S. 203 inserted by No. 108/2003 s. 47.

203 Form of notice of referral

A notice of referral under section 201 to the Court must be in the form specified by the regulations and must be accompanied by copies of—

(a) the notice of cancellation and the direction under which the licence was cancelled;

S. 203(b) amended by No. 68/2016 s. 154.

(b) the initial offer of compensation made by the Victorian Fisheries Authority (if any);

(c) the claim made by the claimant; and

S. 203(d) amended by No. 68/2016 s. 154.

(d) the reply (if any) of the Victorian Fisheries Authority to the claim.

S. 204 inserted by No. 108/2003 s. 47.

204 Service of notice of referral on other parties

A party who refers a disputed claim to the Court must cause a copy of the notice of referral under section 201 to be served on the other parties to the dispute.

S. 205 inserted by No. 108/2003 s. 47.

205 Withdrawal application

The principal registrar of the Tribunal may grant any application by consent of the parties for adjournment or withdrawal of any claim for compensation referred to the Tribunal.

Division 3—Compulsory conference in the court

S. 206 inserted by No. 108/2003 s. 47.

206 Compulsory conference

(1) The Court may order the parties to any disputed claim referred to it to attend a compulsory conference to be conducted by the Court or a Master of the Court.

(2) If the Court orders a compulsory conference to be held in respect of a dispute, it must be held as soon as is practicable after the date on which the notice of referral was lodged in respect of the dispute, unless the Court orders otherwise.

S. 207 inserted by No. 108/2003 s. 47.

207 Objects of compulsory conference

The objects of the compulsory conference are—

(a) to determine what matters are in dispute between the parties; and

(b) to identify the questions of law and of fact that are required to be determined by the Court; and

(c) to provide a forum in which the parties may discuss their respective reasons for making or rejecting the disputed claim and, if possible, settle or resolve the matters in dispute before the dispute is heard by the Court.

S. 208 inserted by No. 108/2003 s. 47.

208 Parties may vary offer or claim

Nothing in this Part prevents—

S. 208(a) amended by No. 68/2016 s. 155.

(a) the Victorian Fisheries Authority in a compulsory conference from increasing the amount of any offer made to a claimant; or

(b) the claimant in a compulsory conference from reducing the amount of the claim—

at any time before the settlement or determination of the dispute.

S. 209 inserted by No. 108/2003 s. 47.

209 Settlement

If the parties to the dispute arrive at an agreement to settle the disputed claim at any time before the determination of the claim by the Court, the Court must ratify the agreement, which then takes effect as if it were a determination of the Court under this Part.

Division 4—Determinations

S. 210 inserted by No. 108/2003 s. 47.

210 Determination of claim

(1) On an application or referral of a disputed claim under this Part, the Tribunal or Court is to determine the amount of compensation in accordance with this Act to be paid in respect of the claim and may make any orders necessary to give effect to that determination.

S. 210(2) amended by No. 62/2014 s. 14.

(2) An appeal to the Court of Appeal from a determination or an order made by the Court

under this section lies only on a question of law and with leave of the Court of Appeal.

S. 211 inserted by No. 108/2003 s. 47, amended by No. 68/2016 s. 156.

211 Principles to be applied in determining compensation

In determining the compensation payable, the Tribunal or the Court is not bound by the exercise of any discretion of the Victorian Fisheries Authority or by any opinion or determination of the Victorian Fisheries Authority, but must determine the compensation payable in the particular circumstances of the case having regard to the provisions of this Act.

S. 212 inserted by No. 108/2003 s. 47.

212 Costs

(1) In any proceedings under this Part, the Tribunal or the Court (as the case requires) may award such costs as it thinks proper but in making an order for costs must, if the Tribunal or Court considers it appropriate to do so, take into consideration—

S. 212(1)(a) amended by No. 68/2016 s. 157(1).

(a) the amount of compensation awarded by the Tribunal or Court as compared with the amount (if any) offered by the Victorian Fisheries Authority; and

(b) the extent to which, in the opinion of the Tribunal or Court, the proceedings have arisen from, or have been affected by—

S. 212(1)(b)(i) amended by No. 68/2016 s. 157(1).

(i) unreasonable conduct on the part of the claimant or the Victorian Fisheries Authority; or

(ii) the failure of the claimant to give adequate details of the claim or supply supporting material when required to do so; or

(iii) an excessive claim by the claimant; or

S. 212(1)(b)(iv) amended by No. 68/2016 s. 157(1).

(iv) an unduly depressed offer by the Victorian Fisheries Authority; and

(c) any other matters which under this Part are to be taken into account in determining the allocation of costs.

(2) The Court may make an order with respect to the assessment of costs in the same manner as it may in respect of any other matter before the Court.

S. 212(3) amended by No. 68/2016 s. 157(2).

(3) All costs payable to the Victorian Fisheries Authority may be set off by the Victorian Fisheries Authority against any compensation awarded or costs payable to the claimant.

S. 212(4) amended by No. 68/2016 s. 157(3).

(4) All costs payable to the claimant may be recovered by the claimant from the Victorian Fisheries Authority in the same manner as the compensation awarded.

S. 213 inserted by No. 108/2003 s. 47.

213 Payment of compensation

The sum awarded as compensation by the Tribunal or the Court must be paid within one month after the sum awarded has been determined.

S. 214 inserted by No. 108/2003 s. 47.

214 Supreme Court—limitation of jurisdiction

It is the intention of sections 202(1), 209 and 210(2) to alter or vary section 85 of the **Constitution Act 1975**.

Schedules

* * * * *

Sch. 1 amended by Nos 46/1998 s. 7(Sch. 1), 80/2000 s. 20, 108/2003 s. 48, 22/2004 s. 8, 108/2004 s. 117(1) (Sch. 3 item 79.7), 80/2006 s. 26(Sch. item 40.7), repealed by No. 35/2009 s. 49.

Sch. 2 repealed by No. 29/2011 s. 3(Sch. 1 item 39.3).

* * * * *

Sch. 3 inserted by No. 5/1997 s. 51.

Schedule 3—Regulation-making powers

1 Fishing activities

1.1 Prohibiting or regulating the taking, receiving, handling, keeping, possession, landing, processing, storage, transporting, distribution, preparation, marketing, presentation and sale of fish, fishing bait, protected aquatic biota or noxious aquatic species.

1.2 The orderly fishing and preservation of good order and safety among fishers in Victorian waters.

1.3 Prohibiting or regulating methods for taking fish.

1.4 Prescribing catch limits.

1.5 Prescribing restrictions as to size or other characteristics of fish.

1.6 Regulating fishing competitions.

1.7 Requiring the provision of reports in relation to any activity prohibited or regulated by this Act.

1.8 Prohibiting or regulating the marking, branding or tagging of fish.

1.9 Prohibiting or regulating the mutilation of, interference with, shucking of, removal of eggs from, removal of shells from or fin clipping of fish.

1.10 Prohibiting or regulating berleying and the use of substances as berley.

2 Measurements

2.1 Prescribing methods for measuring the size, weight, length, number or value of any fish (either before, during or after processing).

2.2 Prescribing methods for equating the quantity, size, weight, length, number or value of fish (or parts of fish) in one form (for example, unprocessed fish) to the quantity, size, weight, length, number or value of fish (or parts of fish) in a different form (for example, processed fish).

2.3 Prescribing methods for measuring boats and equipment and parts of boats and equipment.

2.4 Regulating the weighing of fish.

3 Licences and permits

3.1 Creating new categories of fishery licences authorising the holders of the licences to carry out specified activities relating to specified fish or fisheries.

3.2 Creating new categories of licences and permits authorising the holders of the licences or permits to do anything else regulated by this Act.

3.3 Creating, modifying or revoking classes of licences and permits within categories of licences and permits.

3.4 Prescribing procedures and conditions for the issue of new licences whether upon application or by public tender.

3.5 Prescribing the maximum number of licences of a particular type that may be issued in respect of a particular fishery or activity.

3.6 Prescribing the maximum number of licences of a particular class or in respect of a particular fishery or activity that may be held by the same person.

3.7 Prescribing which classes of licences are transferable or renewable and which are not (where this is not dealt with by this Act).

3.8 Prescribing procedures and conditions for the transfer or renewal of licences and permits that are transferable or renewable.

3.9 Prescribing grounds for the refusal of the issue or variation of licences and permits and for the refusal of the transfer or renewal of licences and permits that are transferable or renewable.

Sch. 3 cl. 3.9A inserted by No. 35/2009 s. 75.

3.9A Prescribing grounds for the suspension of a licence.

3.10 Prohibiting or regulating the granting of fishery licences to corporations.

3.11 Prescribing eligibility criteria in respect of licences and permits, including requirements where the applicant or holder is a corporation relating to the corporation, people in effective control of the corporation or nominees of the corporation.

3.12 Prescribing the maximum duration of different categories or classes of licences and permits where that duration is not specified by this Act.

3.13 Prescribing conditions to which licences or permits are subject.

3.14 Prohibiting or regulating the possession and use of equipment by, and other activities of, the holders of specified classes of licences or permits.

3.15 Prohibiting or regulating the use by the holders of licences of assistance by other people in undertaking any activity permitted by the licence, and who may provide that assistance.

3.16 Regulating the activities of agents of licence and permit holders while acting as agents.

3.17 Reducing the number of licences or permits that are held in respect of a fishery.

3.18 Requiring bonds (or similar financial assurances) as a pre-condition to the issuing of an aquaculture licence to ensure that the area to be used under the licence is restored to a specified state after the expiry of the licence.

4 Boats and Equipment

Sch. 3 cl. 4.1 substituted by No. 108/2003 s. 49(a).

4.1 Providing for the registration of boats including—

(a) the transfer and renewal of registration;

(b) the refusal of registration, or the transfer or renewal of registration;

(c) the cancellation of registration;

(d) the obtaining of information on the seaworthiness of boats from other people or bodies;

(e) giving recognition to surveys of seaworthiness conducted by appropriate authorities and to certificates from appropriate authorities as to the state of a boat or its current survey status.

4.2 Prescribing equipment to be installed in or carried on fishing boats for the handling or storage of fish.

4.3 Prohibiting or regulating boats having on board commercial fishing equipment while in Victorian waters closed to the use of such equipment.

4.4 Prohibiting or regulating the use of boats or equipment for the taking or landing of fish, fishing bait, protected aquatic biota or noxious aquatic species for sale and prescribing the type of identification or marking required on such boats or equipment.

4.5 Prohibiting or regulating the use, possession or sale of specified fishing or aquaculture equipment and prescribing specifications for such equipment.

4.6 Defining fishing or aquaculture equipment for the purposes of this Act and prescribing its use.

4.7 Regulating the use of charter boats for recreational fishing or the non-consumptive use of fish (including the licensing of such boats or their operators).

4.8 Prohibiting or regulating the transfer of boats and equipment between licence or permit holders (including transfer provisions intended to reduce the quantity of equipment in use).

4.9 Prohibiting or regulating the marking of aquaculture equipment within specified areas.

4.10 Prohibiting or regulating the leaving, setting or removal of commercial fishing equipment and commercial aquaculture equipment.

Sch. 3 cl. 4.11 inserted by No. 80/2000 s. 21.

4.11 Requiring the installation and maintenance of vessel monitoring systems on boats and regulating the use of vessel monitoring systems.

5 Fees

5.1 Prescribing fees for applications, the issue or holding of licences and permits and the variation, transfer or renewal of (where permitted) licences and permits (including fees that are to be determined by reference to the value or price of a licence or permit (for example a transfer fee that is to be a specified percentage of the price of a licence)).

5.2 Prescribing fees for the registration, transfer and renewal of registration of boats and equipment used to take fish or fishing bait.

5.3 Prescribing fees for the taking of fish from charter or hire boats.

5.4 Prescribing fees to be charged for the inspection of live fish being introduced into Victoria and for other services rendered by authorised officers.

5.5 Prescribing fees for the use of agents by the holders of licences in undertaking any activity permitted by the licence.

5.6 Prescribing fees for the transfer of individual quota units (including for forfeited individual quota units).

5.7 Prescribing fees in respect of tenders.

5.8 Prescribing fees for the maintenance of aquaculture zones and facilities.

5.9 Regulating the fees that the owners or occupiers of privately-owned land may charge people to angle or fish on that land.

Sch. 3 cl. 5.10 inserted by No. 34/2006 s. 5.

5.10 Prescribing fees in respect of notifications required to be given under Division 3A of Part 4.

6 Miscellaneous matters

6.1 Declaring a fishery to be a developing fishery and prohibiting or regulating fishing activities in that fishery.

6.2 Prescribing criteria for the declaration of any protected aquatic biota.

6.3 Prohibiting or regulating the bringing of specified classes of fish, fishing bait, protected aquatic biota or noxious aquatic species into Victoria, the disposal of water used for such purposes and the disposal of refuse from fish or noxious aquatic species.

6.4 Providing for the marking of the boundaries of areas held under licences or permits, the regular inspection of such areas and prohibiting or regulating the erection, construction, maintenance,

protection and regulation of boundary beacons, buoys, posts, stakes or other marks.

6.5 Prohibiting or regulating aquaculture activities.

6.6 Prohibiting or regulating the release of live fish or live fishing bait into any waters.

6.7 Prescribing any thing required to support the operation of a quota order.

Sch. 3 cl. 6.8 inserted by No. 108/2003 s. 49(b).

6.8 In relation to searches by authorised officers—

(a) further regulating the conduct of those searches; and

(b) requiring the supply of additional details in the records required of those searches.

Sch. 3 cl. 6.9 inserted by No. 108/2003 s. 49(b).

6.9 Requiring the Secretary to report specified incidents involving authorised officers to the Ombudsman appointed under the **Ombudsman Act 1973**.

Sch. 3 cl. 6.10 inserted by No. 64/2013 s. 10.

6.10 Prescribing proceedings of the Council.

7 Administrative matters

7.1 Prescribing notices, signs and documents, including forms, dockets and tags, for the purposes of this Act and prohibiting or regulating the use, possession, interference with, defacement, alteration, or mutilation of such notices, signs or documents.

7.2 Requiring the keeping of records and the furnishing of returns and information by the holders of licences, permits or other authorities under this Act or by other people who handle fish or fishing bait.

7.3 Requiring people who possess more than a specified quantity of fish to have specified documents in their possession.

7.4 Prescribing the form of and procedures for the issue of licences and permits.

7.5 Prescribing persons or classes of persons who may be authorised by the Secretary to issue specified classes of recreational fishery licences.

7.6 Prescribing forms.

8 General

8.1 Prescribing offences the penalties for which do not include cancellation of the relevant licence or permit.

8.2 Exempting a person from the need to hold a licence, permit or authority under this Act.

Sch. 4 inserted by No. 64/2015 s. 6.

Schedule 4—Restriction of net fishing in Port Phillip Bay

Sections 153F, 153G and 153I

Part 1—Election to retain licence

1 Notice of election to retain licence

(1) The Minister must give notice in accordance with this clause that each holder of a Western Port/Port Phillip Bay Fishery Access Licence may elect to retain their licence on and after 1 April 2022.

(2) The notice must be—

(a) published in the Government Gazette; and

(b) sent by letter to each holder of a Western Port/Port Phillip Bay Fishery Access Licence.

(3) The notice must state the following—

(a) that each holder of a Western Port/Port Phillip Bay Fishery Access Licence may elect to retain their licence on and after 1 April 2022;

(b) the opening and closing date for the making of the election;

(c) that the election must be made in writing addressed to the Secretary and signed by the licence holder;

(d) the address to which the election must be sent;

(e) the information that must be included in the election, which must include the name of the licence holder and the licence number;

(f) that making an election does not entitle the licence holder to retain their licence on and after 1 April 2022 unless the Secretary notifies the licence holder in writing that the election is successful.

2 Election to retain licence

An election by a holder of a Western Port/Port Phillip Bay Fishery Access Licence to retain their licence on and after 1 April 2022 must—

(a) be made in writing to the Secretary and received by the Secretary within the period stated in the notice under clause 1; and

(b) be signed by the licence holder; and

(c) include the information required by the notice under clause 1.

3 Determination of successful elections

(1) After the closing date specified in the notice under clause 1 for making an election, the Secretary must determine in accordance with this clause which of the elections to retain a licence are successful.

(2) If 8 or less holders of a Western Port/Port Phillip Bay Fishery Access Licence have made an election in accordance with clause 2, the Secretary must determine that the election of each of those licence holders is successful.

(3) If more than 8 holders of a Western Port/Port Phillip Bay Fishery Access Licence have made an election in accordance with clause 2—

(a) the Secretary must determine the non-net catch of each of those licence holders over the survey period based on the records held by the Secretary; and

(b) the Secretary must rank the licence holders from the highest non-net catch determined under paragraph (a) to the lowest; and

(c) the Secretary must determine that—

(i) the election of each of the 8 highest ranked licence holders is successful; and

(ii) the remaining elections are unsuccessful.

(4) In this clause—

non-net catch, of a licence holder, means the total weight in kilograms of the non-net catch of all species caught under the licence (whether or not the licence holder held the licence for the whole of the survey period);

records held by the Secretary means the records of catch history as recorded in the Integrated Catch and Effort System maintained by the Department of Economic Development, Jobs, Transport and Resources on behalf of the Secretary;

survey period means the 5 year period from 1 April 2009 to 31 March 2014.

4 Notification of outcome of election

After determining which of the elections made by the holders of a Western Port/Port Phillip Bay Fishery Access Licence to retain their licence are successful, the Secretary must notify in writing—

(a) each of the licence holders who made a successful election stating that—

(i) the election made by the licence holder is successful; and

(ii) the licence holder is entitled to retain their licence on and after 1 April 2022; and

(b) each of the licence holders (if any) who made an unsuccessful election stating that the election made by the licence holder is unsuccessful.

Part 2—Election to surrender licence

5 Definitions

In this Part—

continuing licence holder means a licence holder who is entitled under section 153F(3) to retain a Western Port/Port Phillip Bay Fishery Access Licence on and after 1 April 2022;

election period means—

(a) the initial election period; or

(b) the 12 month period commencing on—

(i) 1 April 2016; or

(ii) 1 April 2017; or

(iii) 1 April 2018; or

(iv) 1 April 2019; or

(v) 1 April 2020;

eligible licence holder means—

(a) in the case of the initial election period —all licence holders;

(b) in the case of any other election period —all remaining licence holders;

initial election period means the period commencing on the day section 5 of the **Fisheries Amendment Bill 2015** comes into operation and ending immediately before 1 April 2016;

licence holder has the same meaning as in section 153D;

remaining licence holder means a licence holder who is not a continuing licence holder.

6 Notice that licence holder may elect to surrender licence

(1) On or after the commencement of each election period, the Minister must give notice in accordance with this clause that each eligible licence holder may elect to surrender their licence.

(2) The notice must be—

(a) published in the Government Gazette; and

(b) sent by letter to each eligible licence holder.

(3) The notice must state the following—

(a) that each eligible licence holder may elect to surrender their licence;

(b) the opening and closing date for the making of the election;

Sch. 4 cl. 6(3)(c) amended by No. 68/2016 s. 158(a).

(c) that the election must be made in writing addressed to the Victorian Fisheries Authority and signed by the licence holder;

(d) the address to which the election must be sent;

(e) the information that must be included in the election, which must include the name of the licence holder and the licence number;

(f) in the case of the notice given in the initial election period—

(i) that the holder of a Western Port/Port Phillip Bay Fishery Access Licence may elect to surrender their licence even if they also elect to retain their licence; and

(ii) the election to surrender is conditional on the election to retain the licence being unsuccessful;

(g) if the licence holder elects to surrender their licence and that election is successful, the licence will be cancelled before the end of the election period in which the election is made.

(4) In addition, the notice sent to each eligible licence holder must state the amount of compensation payable to the licence holder if the licence is cancelled in the current election period.

7 Election to surrender licence

An election by an eligible licence holder to surrender their licence must—

Sch. 4 cl. 7(a) amended by No. 68/2016 s. 158(b).

(a) be made in writing to the Victorian Fisheries Authority and received by the Victorian Fisheries Authority within the period stated in the notice under clause 6; and

(b) be signed by the licence holder; and

(c) include the information required by the notice under clause 6.

8 Determination of successful elections

Sch. 4 cl. 8(1) amended by No. 68/2016 s. 158(c).

(1) After the closing date specified in the notice under clause 6 for making an election and subject to subclause (2), the Victorian Fisheries Authority must determine that each of the elections to

surrender a licence made in accordance with clause 7 is successful.

Sch. 4 cl. 8(2) amended by No. 68/2016 s. 158(d)(i).

(2) The Victorian Fisheries Authority must not determine that an election by a licence holder to surrender their licence is successful if—

(a) the election to surrender was not made in accordance with clause 7; or

Sch. 4 cl. 8(2)(b) amended by No. 68/2016 s. 158(d)(ii).

(b) the Victorian Fisheries Authority has determined that an election by the licence holder to retain their licence on and after 1 April 2022 is successful; or

(c) an election by the licence holder to retain their licence on and after 1 April 2022 remains undetermined.

Sch. 4 cl. 9 amended by No. 68/2016 s. 158(e).

9 Notification of successful election

After determining which of the elections made by licence holders to surrender their licence are successful, the Victorian Fisheries Authority must notify in writing—

(a) each of the licence holders who made a successful election stating—

(i) that the election made by the licence holder to surrender their licence is successful; and

(ii) the effective date of the cancellation of the licence; and

(iii) the amount of compensation to which the licence holder is entitled; and

(b) each of the licence holders who made an unsuccessful election stating that the election made by the licence holder to surrender their licence is unsuccessful.

Part 3—Calculation of compensation

10 Calculation of compensation

(1) The amount of compensation payable to a licence holder whose licence is cancelled under section 153H is determined in accordance with Table 1 where—

T is the annual average catch value of the catch taken under the licence held by the licence holder over the survey period (whether or not the licence holder held the licence for the whole of that period).

Table 1

Column 1 *Period in which licence cancelled*	*Column 2* *Formula for determining compensation*
Initial election period	An amount (A) = $385 000 + (3×T)
Election period commencing 1 April 2016	An amount (B) = A × 9/10
Election period commencing 1 April 2017	An amount (C) = B × 9/10
Election period commencing 1 April 2018	An amount (D) = C × 9/10
Election period commencing 1 April 2019	An amount (E) = D × 9/10
Election period commencing 1 April 2020	An amount (F) = E × 9/10
After 1 April 2021	An amount (G) = F × 9/10

(2) For the purposes of subclause (1), the annual average catch value taken under a licence over the survey period (**T**) is determined as follows—

(a) for each species specified in column 1 of Table 2—

Sch. 4 cl. 10(2)(a)(i) amended by No. 68/2016 s. 158(f).

(i) the total catch, in kilograms, of that species is determined based on the catch history of the licence over the survey period indicated in the records held by the Secretary or the Victorian Fisheries Authority; and

(ii) the total catch is multiplied by the value per kilogram specified opposite in column 2 of Table 2 to determine the total catch value of the species over the survey period; and

(iii) the total catch value of the species over the survey period is divided by 5 to determine the annual average catch value of the species; and

(b) the annual average catch values of each of the species, as determined under paragraph (a) are added together.

Table 2

Column 1 *Species*	*Column 2* *Value (per kg)*
All Other	$4.14
Anchovy, Southern	$2.47
Australian salmon	$0.69
Bream, Black	$11.00
Calamary, Southern	$12.89
Flathead, Rock	$6.65

Column 1 *Species*	*Column 2* *Value (per kg)*
Flathead, Sand	$4.33
Flathead, Yank	$4.00
Flounder, Unspecified	$9.00
Garfish, Southern sea	$7.36
Leatherjacket	$3.40
Morwong, Dusky	$4.00
Morwong, Jackass	$4.00
Mullet, Yellow-Eye	$1.96
Pike, Unspecified	$4.51
Ruff	$4.00
Sardine, Australian	$3.00
Shark, Gummy	$11.00
Skate	$4.00
Snapper	$9.40
Sprat, Sandy	$2.00
Trevally	$3.64
Whiting, King George	$22.00
Yellowtail	$2.00

(3) In this clause—

Sch. 4 cl. 10(3) def. of *records held by the Secretary* substituted as *records held by the Secretary or the Victorian Fisheries Authority* by No. 68/2016 s. 158(g).

records held by the Secretary or the Victorian Fisheries Authority means the records of catch history as recorded in the Integrated Catch and Effort System maintained by the Department of Economic Development, Jobs, Transport and Resources on behalf of the Secretary and the Victorian Fisheries Authority;

survey period means the 5 year period from 1 April 2009 to 31 March 2014.

Sch. 5 inserted by No. 35/2019 s. 7.

Schedule 5—Cancellation of Gippsland Lakes Fishery Access Licences

Sections 153N, 153O, 153R and 153S

Part 1—Definitions

1 Definitions in this Schedule

In this Schedule—

licence means a Gippsland Lakes Fishery Access Licence as defined in section 153M;

licence holder means the holder of a Gippsland Lakes Fishery Access Licence;

records held by the Victorian Fisheries Authority means the records of catch history as recorded in the Integrated Catch and Effort System maintained by the Victorian Fisheries Authority;

survey period means the 5-year period from 1 April 2012 to 31 March 2017 inclusive.

Part 2—Election to surrender licence

2 Notice that licence holder may elect to surrender licence

(1) On or after the commencement of Division 6 of Part 8, the Minister must give notice in accordance with this clause to each holder of a Gippsland Lakes Fishery Access Licence that the licence holder may elect to surrender their licence.

(2) The notice must be—

(a) published in the Government Gazette; and

(b) sent by letter to each licence holder.

(3) The notice must state the following—

(a) that each licence holder may elect to surrender their licence;

(b) the opening and closing date for the making of the election;

(c) that the election must be made in writing addressed to the Victorian Fisheries Authority and signed by the licence holder;

(d) the address to which the election must be sent, which may include an email address;

(e) the information that must be included in the election, which must include the name of the licence holder and the licence number;

(f) that a successful election will result in the licence being cancelled on 1 April 2020;

(g) that on and after the surrender of the licence, the licence may not be transferred to another person;

(h) that if the licence holder does not elect to surrender their licence before the closing date, the licence will be cancelled on 1 April 2021;

(i) that compensation for the cancellation of the licence will be calculated in accordance with Part 3.

(4) In addition, the notice sent to each licence holder must state the amount of compensation payable to the licence holder—

(a) if the licence is successfully surrendered under this Part; or

(b) if the licence is not successfully surrendered under this Part.

3 Election to surrender licence

An election by a licence holder to surrender their licence must—

(a) be made in writing to the Victorian Fisheries Authority and received by the Victorian Fisheries Authority within the period stated in the notice under clause 2; and

(b) be signed by the licence holder; and

(c) include the information required by the notice under clause 2.

4 Determination of successful elections

After the closing date specified in the notice under clause 2 for making an election, the Victorian Fisheries Authority must determine that each of the elections to surrender a licence made in accordance with clause 3 is successful.

5 Notification of successful election

Within 28 days after receiving a successful election to surrender a licence from a licence holder, the Victorian Fisheries Authority must notify the licence holder in writing—

(a) that the election made by the licence holder to surrender their licence is successful; and

(b) that the licence will be cancelled on 1 April 2020; and

(c) the amount of compensation to which the licence holder is entitled.

6 Notification of unsuccessful election

Within 28 days after receiving an unsuccessful election to surrender a licence, the Victorian Fisheries Authority must notify the licence holder in writing stating—

(a) that the election made by the licence holder to surrender their licence has been unsuccessful; and

(b) the reasons why the election was unsuccessful; and

(c) that the licence holder may submit a further election to surrender their licence in accordance with clause 3; and

(d) that, despite paragraph (c), the further election must be made before the date specified in the notice under this clause (which must not be less than 14 days after receipt of the notice by the licence holder) or the closing date specified in the notice under clause 2, whichever is the later.

Part 3—Calculation of compensation

7 Calculation of compensation

(1) The amount of compensation payable to a licence holder whose licence is cancelled under section 153O or 153P is determined in accordance with Table 1 where—

T is the annual average catch value of the catch taken under the licence held by the licence holder over the survey period (whether or

not the licence holder held the licence for the whole of that period).

Table 1

Column 1 *Date on which licence cancelled*	*Column 2* *Formula for determining compensation*
1 April 2020	The amount (**A**) = $371 000 + $60 000 + (3 × T)
1 April 2021	The amount (**B**) = A × 8/10

(2) For the purposes of subclause (1), the annual average catch value taken under a licence over the survey period (**T**) is determined as follows—

(a) for each species of fish specified in column 1 of Table 2—

(i) the total catch, in kilograms, of the species is determined based on the catch history of the licence over the survey period indicated in the records held by the Victorian Fisheries Authority; and

(ii) the total catch is multiplied by the value per kilogram specified opposite in column 2 of Table 2 to determine the total catch value of the species over the survey period; and

(iii) the total catch value of the species over the survey period is divided by 5 to determine the annual average catch value of the species;

(b) the annual average catch values of each of the species, as determined under paragraph (a), are added together.

Table 2

Column 1 *Species of fish*	*Column 2* *Value (per kg)*
Anchovy, Australian (whitebait)	$5.51
Australian bass	$4.26
Australian herring	$4.32
Australian salmon	$1.34
Australian Sardine (Pilchard)	$4.20
Barracouta	$0.73
Bream, black	$9.87
Calamari, Southern (squid)	$15.04
Carp, European	$4.26
Cod, Southern Rock	$4.26
Cod, Unspecified	$4.26
Crab, Blue Swimmer	$10.13
Crab, European Shore	$4.26
Crab, Other Unspecified	$2.82
Crab, sand	$4.26
Crab, Spider	$2.53
Dory, Silver	$2.72
Eel, longfin	$4.33
Eel, Unspecified	$4.26
Flathead, dusky	$7.93
Flathead, southern sand	$3.16
Flathead, Unspecified	$6.27
Flounder, greenback	$4.26
Flounder, Unspecified	$7.21

Column 1 *Species of fish*	*Column 2* *Value (per kg)*
Garfish, river	$6.65
Garfish, Southern (Sea)	$3.58
Gudgeons	$4.26
Gurnard perch, Common	$4.26
Gurnard, Butterfly	$4.26
Gurnard, Unspecified	$4.26
Kingfish, Yellowtail	$7.57
Latchet	$1.64
Leatherjacket	$1.45
Ling, Rock	$4.26
Luderick	$2.11
Mackerel, Blue	$3.41
Mackerel, jack	$1.24
Mackerel, Unspecified	$4.26
Morwong, dusky	$4.26
Mud crab (unspecified)	$2.82
Mullet, sand	$1.69
Mullet, sea	$2.73
Mullet, yelloweye	$6.95
Mulloway	$6.21
Mussel, blue	$2.31
Octopus	$9.72
Perch, estuary	$4.26
Perch, Unspecified	$4.26
Pike, Unspecified	$4.26
Prawn, Eastern King	$18.70
Prawn, Eastern School	$10.03
Prawn, Other (Unspecified)	$3.81
Ray, Southern Eagle	$2.17

Column 1 *Species of fish*	*Column 2* *Value (per kg)*
Rays	$1.32
Sandworms	$4.26
Sea Carp, Southern	$4.26
Shark, angel	$2.23
Shark, Elephant	$4.26
Shark, gummy	$6.29
Shark, Other (Unspecified)	$4.26
Shark, Thresher	$1.29
Shellbait	$4.26
Shrimp bait	$4.26
Shrimp, Ghost	$4.26
Skates and Rays, Other	$1.32
Snapper	$7.87
Snook	$6.41
Sole, Unspecified	$4.26
Sprat (Unspecified)	$4.26
Sprat, Blue	$4.26
Squid, Goulds	$2.93
Tailor	$6.30
Trevalla, Spotted	$2.30
Trevally, silver	$5.05
Trout, brown	$4.26
Trout, rainbow	$5.00
Tuna, Unspecified	$4.26
Warehou, blue	$4.26
Whiting, blue weed	$12.21
Whiting, King George	$17.18
Whiting, Sand	$12.21
Whiting, school	$3.32

Column 1 *Species of fish*	*Column 2* *Value (per kg)*
Whiting, Unspecified	$4.26
Wrasse, blue throat	$8.52
Wrasse, Unspecified	$4.26
All other species	$4.26

Endnotes

1 General information

See www.legislation.vic.gov.au for Victorian Bills, Acts and current Versions of legislation and up-to-date legislative information.

Minister's second reading speech—

Legislative Assembly: 12 October 1995

Legislative Council: 15 November 1995

The long title for the Bill for this Act was "A Bill to reform the law relating to Victorian fisheries, to repeal the **Fisheries Act 1968** and to make consequential amendments to certain other Acts and for other purposes.".

Constitution Act 1975:

Section 85(5) statement:

Legislative Assembly: 12 October 1995

Legislative Council: 15 November 1995

Absolute majorities:

Legislative Assembly: 2 November 1995

Legislative Council: 21 November 1995 and 22 November 1995

The **Fisheries Act 1995** was assented to on 5 December 1995 and came into operation as follows:

Sections 1–9, 11, 69–73, 88, 89, 95, 160(3)(a)(b)(10)(b), 163 on 25 January 1996: Government Gazette 25 January 1996 page 148; section 160(10)(a) on 1 April 1996: Special Gazette (No. 31) 1 April 1996 page 1; sections 90–94, 160(1)(2)(3)(c)(4)–(9)(11), Schedule 1 on 1 August 1996: Government Gazette 1 August 1996 page 1954; sections 144(2), 153A, 153B on 31 March 1997: Government Gazette 27 March 1997 page 665; sections 155(4), 162 on 18 December 1997: Government Gazette 18 December 1997 page 3613; sections 10, 12–68A, 75, 76, 81–87, 101–137, 139, 140, 142–144(1), 145–153, 154, 155(1)–(3)(5)–(13), 155A–159, 161, Schedules 2, 3 on 1 April 1998: Government Gazette 26 February 1998 page 418.

Section 74 was never proclaimed, repealed by No. 5/1997 s. 11.

Sections 77–80 were never proclaimed, repealed by No. 5/1997 s. 12.

Sections 96–100 were never proclaimed, repealed by No. 5/1997 s. 17.

Section 138 was never proclaimed, repealed by No. 5/1997 s. 34.

Section 141 was never proclaimed, repealed by No. 5/1997 s. 36.

INTERPRETATION OF LEGISLATION ACT 1984 (ILA)

Style changes

Section 54A of the ILA authorises the making of the style changes set out in Schedule 1 to that Act.

References to ILA s. 39B

Sidenotes which cite ILA s. 39B refer to section 39B of the ILA which provides that where an undivided section or clause of a Schedule is amended by the insertion of one or more subsections or subclauses, the original section or clause becomes subsection or subclause (1) and is amended by the insertion of the expression "(1)" at the beginning of the original section or clause.

Interpretation

As from 1 January 2001, amendments to section 36 of the ILA have the following effects:

- **Headings**

All headings included in an Act which is passed on or after 1 January 2001 form part of that Act. Any heading inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, forms part of that Act. This includes headings to Parts, Divisions or Subdivisions in a Schedule; sections; clauses; items; tables; columns; examples; diagrams; notes or forms. See section 36(1A)(2A).

- **Examples, diagrams or notes**

All examples, diagrams or notes included in an Act which is passed on or after 1 January 2001 form part of that Act. Any examples, diagrams or notes inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, form part of that Act. See section 36(3A).

- **Punctuation**

All punctuation included in an Act which is passed on or after 1 January 2001 forms part of that Act. Any punctuation inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, forms part of that Act. See section 36(3B).

- **Provision numbers**

All provision numbers included in an Act form part of that Act, whether inserted in the Act before, on or after 1 January 2001. Provision numbers include section numbers, subsection numbers, paragraphs and subparagraphs. See section 36(3C).

- **Location of "legislative items"**

A "legislative item" is a penalty, an example or a note. As from 13 October 2004, a legislative item relating to a provision of an Act is taken to be at the foot of that provision even if it is preceded or followed by another legislative item that relates to that provision. For example, if a penalty at the foot of a provision is followed by a note, both of these legislative items will be regarded as being at the foot of that provision. See section 36B.

- **Other material**

Any explanatory memorandum, table of provisions, endnotes, index and other material printed after the Endnotes does not form part of an Act. See section 36(3)(3D)(3E).

2 Table of Amendments

This publication incorporates amendments made to the **Fisheries Act 1995** by Acts and subordinate instruments.

Fisheries (Amendment) Act 1996, No. 67/1996

Assent Date:	17.12.96
Commencement Date:	Ss 1, 2 on 17.12.96: s. 2(1); ss 3–5 on 31.3.97: Government Gazette 27.3.97 p. 665
Current State:	All of Act in operation

Fisheries (Further Amendment) Act 1997, No. 5/1997 (as amended by No. 74/2000)

Assent Date:	22.4.97
Commencement Date:	22.4.97: s. 2
Current State:	All of Act in operation

Public Sector Reform (Miscellaneous Amendments) Act 1998, No. 46/1998

Assent Date:	26.5.98
Commencement Date:	S. 7(Sch. 1) on 1.7.98: s. 2(2)
Current State:	This information relates only to the provision/s amending the **Fisheries Act 1995**

Conservation, Forests and Lands (Miscellaneous Amendments) Act 1998, No. 76/1998

Assent Date:	10.11.98
Commencement Date:	S. 8 on 15.12.98: s. 2(5)
Current State:	This information relates only to the provision/s amending the **Fisheries Act 1995**

Statute Law Revision Act 2000, No. 74/2000

Assent Date:	21.11.00
Commencement Date:	S. 3(Sch. 1 item 49) on 22.11.00: s. 2(1)
Current State:	This information relates only to the provision/s amending the **Fisheries Act 1995**

Fisheries (Amendment) Act 2000, No. 80/2000

Assent Date:	28.11.00
Commencement Date:	Ss 3–8, 10–21 on 29.11.00: s. 2(1); s. 9 on 1.3.01: Government Gazette 8.2.01 p. 168; s. 22 on 1.4.03: s. 2(4)
Current State:	This information relates only to the provision/s amending the **Fisheries Act 1995**

Corporations (Consequential Amendments) Act 2001, No. 44/2001

Assent Date:	27.6.01
Commencement Date:	S. 3(Sch. item 46) on 15.7.01: s. 2
Current State:	This information relates only to the provision/s amending the **Fisheries Act 1995**

Fisheries (Further Amendment) Act 2002, No. 17/2002

Assent Date:	21.5.02
Commencement Date:	Ss 5–31 on 22.5.02: s. 2(1); ss 3, 4 on 1.7.03: s. 2(3)
Current State:	This information relates only to the provision/s amending the **Fisheries Act 1995**

National Parks (Marine National Parks and Marine Sanctuaries) Act 2002, No. 40/2002

Assent Date:	18.6.02
Commencement Date:	Ss 25–27 on 16.11.02: s. 2
Current State:	This information relates only to the provision/s amending the **Fisheries Act 1995**

Seafood Safety Act 2003, No. 24/2003

Assent Date:	13.5.03
Commencement Date:	S. 93 on 1.7.03: Government Gazette 26.6.03 p. 1548
Current State:	This information relates only to the provision/s amending the **Fisheries Act 1995**

Fisheries (Amendment) Act 2003, No. 56/2003

Assent Date:	16.6.03
Commencement Date:	Ss 3, 4 on 17.6.03: s. 2
Current State:	This information relates only to the provision/s amending the **Fisheries Act 1995**

Forests and National Parks Acts (Amendment) Act 2003, No. 97/2003

Assent Date:	2.12.03
Commencement Date:	S. 11 on 3.12.03: s. 2
Current State:	This information relates only to the provision/s amending the **Fisheries Act 1995**

Fisheries (Further Amendment) Act 2003, No. 108/2003 (as amended by No. 22/2004)

Assent Date:	9.12.03
Commencement Date:	Ss 3, 4, 6, 7, 9–21, 23–28, 29(1)(2), 32–43, 45, 47–50 on 10.12.03: s. 2(1); s. 44 on 1.4.04: s. 2(4); ss 31, 46 on 1.4.04: s. 2(5); s. 5 on 8.4.04: Government Gazette 8.4.04 p. 789; ss 29(3), 30 on 31.12.04: s. 2(6)
Current State:	This information relates only to the provision/s amending the **Fisheries Act 1995**

Crimes (Controlled Operations) Act 2004, No. 16/2004 (as amended by Nos 69/2004, 87/2005)

Assent Date:	18.5.04
Commencement Date:	Ss 48, 49 on 2.11.08: Government Gazette 30.10.08 p. 2530
Current State:	This information relates only to the provision/s amending the **Fisheries Act 1995**

Primary Industries Legislation (Miscellaneous Amendments) Act 2004, No. 22/2004

Assent Date:	18.5.04
Commencement Date:	Ss 6–8 on 19.5.04: s. 2(1)
Current State:	This information relates only to the provision/s amending the **Fisheries Act 1995**

Primary Industries Legislation (Further Miscellaneous Amendments) Act 2004, No. 69/2004

Assent Date:	19.10.04
Commencement Date:	Ss 3–13, 15–17, 20, 21 on 20.10.04: s. 2(1); ss 14, 18, 19 on 1.7.06: s. 2(5)
Current State:	This information relates only to the provision/s amending the **Fisheries Act 1995**

Public Administration Act 2004, No. 108/2004

Assent Date:	21.12.04
Commencement Date:	S. 117(1)(Sch. 3 item 79) on 5.4.05: Government Gazette 31.3.05 p. 602
Current State:	This information relates only to the provision/s amending the **Fisheries Act 1995**

Legal Profession (Consequential Amendments) Act 2005, No. 18/2005

Assent Date:	24.5.05
Commencement Date:	S. 18(Sch. 1 item 44) on 12.12.05: Government Gazette 1.12.05 p. 2781
Current State:	This information relates only to the provision/s amending the **Fisheries Act 1995**

Primary Industries Acts (Amendment) Act 2005, No. 50/2005

Assent Date:	24.8.05
Commencement Date:	Ss 13–15 on 25.8.05: s. 2(1)
Current State:	This information relates only to the provision/s amending the **Fisheries Act 1995**

Fisheries (Abalone) Act 2005, No. 58/2005

Assent Date:	20.9.05
Commencement Date:	S. 11 on 20.9.05: s. 2(1); ss 3–10, 12, 13 on 1.4.06: s. 2(3)
Current State:	This information relates only to the provision/s amending the **Fisheries Act 1995**

National Parks (Otways and Other Amendments) Act 2005, No. 60/2005

Assent Date:	20.9.05
Commencement Date:	Ss 29–31 on 21.9.05: s. 2(1)
Current State:	This information relates only to the provision/s amending the **Fisheries Act 1995**

Primary Industries Acts (Miscellaneous Amendments) Act 2006, No. 34/2006

Assent Date:	13.6.06
Commencement Date:	Ss 3–5 on 14.6.06: s. 2
Current State:	This information relates only to the provision/s amending the **Fisheries Act 1995**

Public Sector Acts (Further Workplace Protection and Other Matters) Act 2006, No. 80/2006

Assent Date:	10.10.06
Commencement Date:	S. 26(Sch. item 40) on 11.10.06: s. 2(1)
Current State:	This information relates only to the provision/s amending the **Fisheries Act 1995**

Fisheries Amendment Act 2007, No. 51/2007

Assent Date:	17.10.07
Commencement Date:	Ss 3(1), 4–6, 9(1), 10–13 on 18.10.07: s. 2(1); ss 3(2), 7, 8, 9(2) on 2.3.09: Government Gazette 5.2.09 p. 200
Current State:	This information relates only to the provision/s amending the **Fisheries Act 1995**

Primary Industries Legislation Amendment Act 2009, No. 35/2009 (as amended by No. 36/2009)

Assent Date:	30.6.09
Commencement Date:	Ss 27–75 on 1.7.09: s. 2(1)
Current State:	This information relates only to the provision/s amending the **Fisheries Act 1995**

Criminal Procedure Amendment (Consequential and Transitional Provisions) Act 2009, No. 68/2009

Assent Date:	24.11.09
Commencement Date:	S. 97(Sch. item 58) on 1.1.10: Government Gazette 10.12.09 p. 3215
Current State:	This information relates only to the provision/s amending the **Fisheries Act 1995**

Statute Law Amendment (Evidence Consequential Provisions) Act 2009, No. 69/2009

Assent Date:	24.11.09
Commencement Date:	S. 54(Sch. Pt 2 item 22) on 1.1.10: s. 2(2)
Current State:	This information relates only to the provision/s amending the **Fisheries Act 1995**

Crimes Legislation Amendment Act 2010, No. 7/2010

Assent Date:	16.3.10
Commencement Date:	Ss 11–13 on 17.3.10: s. 2
Current State:	This information relates only to the provision/s amending the **Fisheries Act 1995**

Marine Safety Act 2010, No. 65/2010

Assent Date:	28.9.10
Commencement Date:	S. 420(Sch. 3 item 7) on 1.7.12: s. 2(2)
Current State:	This information relates only to the provision/s amending the **Fisheries Act 1995**

Personal Property Securities (Statute Law Revision and Implementation) Act 2010, No. 74/2010

Assent Date: 19.10.10
Commencement Date: S. 24 on 30.1.12: Special Gazette (No. 423) 21.12.11 p. 3
Current State: This information relates only to the provision/s amending the **Fisheries Act 1995**

Fisheries Amendment Act 2011, No. 21/2011
Assent Date: 7.6.11
Commencement Date: 1.8.11: Special Gazette (No. 237) 19.7.11 p. 1
Current State: All of Act in operation

Statute Law Revision Act 2011, No. 29/2011
Assent Date: 21.6.11
Commencement Date: S. 3(Sch. 1 item 39) on 22.6.11: s. 2(1)
Current State: This information relates only to the provision/s amending the **Fisheries Act 1995**

Water Amendment (Governance and Other Reforms) Act 2012, No. 17/2012
Assent Date: 3.4.12
Commencement Date: S. 86 on 1.7.12: Special Gazette (No. 172) 29.5.12 p. 1
Current State: This information relates only to the provision/s amending the **Fisheries Act 1995**

Integrity and Accountability Legislation Amendment Act 2012, No. 82/2012
Assent Date: 18.12.12
Commencement Date: Ss 100–105 on 10.2.13: Special Gazette (No. 32) 6.2.13 p. 2
Current State: This information relates only to the provision/s amending the **Fisheries Act 1995**

Co-operatives National Law Application Act 2013, No. 9/2013
Assent Date: 13.3.13
Commencement Date: S. 42(Sch. 2 item 9) on 3.3.14: Special Gazette (No. 46) 18.2.14 p. 1
Current State: This information relates only to the provision/s amending the **Fisheries Act 1995**

Fisheries Amendment Act 2013, No. 64/2013
Assent Date: 6.11.13
Commencement Date: Ss 3(1)(2), 5–7, 9, 11 on 7.11.13: s. 2(1); ss 3(3), 4, 8, 10 on 1.3.14: s. 2(3)
Current State: This information relates only to the provision/s amending the **Fisheries Act 1995**

Statute Law Revision Act 2013, No. 70/2013
Assent Date: 19.11.13
Commencement Date: S. 4(Sch. 2 item 18) on 1.12.13: s. 2(1)
Current State: This information relates only to the provision/s amending the **Fisheries Act 1995**

Legal Profession Uniform Law Application Act 2014, No. 17/2014

Assent Date: 25.3.14
Commencement Date: S. 160(Sch. 2 item 44) on 1.7.15: Special Gazette (No. 151) 16.6.15 p. 1
Current State: This information relates only to the provision/s amending the **Fisheries Act 1995**

Victoria Police Amendment (Consequential and Other Matters) Act 2014, No. 37/2014
Assent Date: 3.6.14
Commencement Date: S. 10(Sch. item 65) on 1.7.14: Special Gazette (No. 200) 24.6.14 p. 2
Current State: This information relates only to the provision/s amending the **Fisheries Act 1995**

Privacy and Data Protection Act 2014, No. 60/2014
Assent Date: 2.9.14
Commencement Date: S. 140(Sch. 3 item 18) on 17.9.14: Special Gazette (No. 317) 16.9.14 p. 1
Current State: This information relates only to the provision/s amending the **Fisheries Act 1995**

Courts Legislation Miscellaneous Amendments Act 2014, No. 62/2014
Assent Date: 9.9.14
Commencement Date: S. 14 on 10.11.14: Special Gazette (No. 364) 14.10.14 p. 1
Current State: This information relates only to the provision/s amending the **Fisheries Act 1995**

Fisheries Amendment Act 2015, No. 64/2015
Assent Date: 1.12.15
Commencement Date: Ss 3–6 on 16.12.15: Special Gazette (No. 403) 15.12.15 p.1
Current State: This information relates only to the provision/s amending the **Fisheries Act 1995**

Justice Legislation Further Amendment Act 2016, No. 3/2016
Assent Date: 16.2.16
Commencement Date: S. 92 on 1.5.16: Special Gazette (No. 114) 26.4.16 p. 1
Current State: This information relates only to the provision/s amending the **Fisheries Act 1995**

Traditional Owner Settlement Amendment Act 2016, No. 67/2016
Assent Date: 15.11.16
Commencement Date: S. 29 on 1.5.17: s. 2(2)
Current State: This information relates only to the provision/s amending the **Fisheries Act 1995**

Victorian Fisheries Authority Act 2016, No. 68/2016
Assent Date: 15.11.16
Commencement Date: Ss 49–158, 175 on 1.7.17: s. 2(2)
Current State: This information relates only to the provision/s amending the **Fisheries Act 1995**

Justice Legislation Amendment (Court Security, Juries and Other Matters) Act 2017, No. 38/2017

Assent Date:	29.8.17
Commencement Date:	S. 61 on 30.8.17: s. 2(1)
Current State:	This information relates only to the provision/s amending the **Fisheries Act 1995**

Oaths and Affirmations Act 2018, No. 6/2018

Assent Date:	27.2.18
Commencement Date:	S. 68(Sch. 2 item 56) on 1.3.19: s. 2(2)
Current State:	This information relates only to the provision/s amending the **Fisheries Act 1995**

Flora and Fauna Guarantee Amendment Act 2019, No. 28/2019

Assent Date:	10.9.19
Commencement Date:	S. 49 on 1.6.20: s. 2(2)
Current State:	This information relates only to the provision/s amending the **Fisheries Act 1995**

Marine and Fisheries Legislation Amendment Act 2019, No. 35/2019

Assent Date:	22.10.19
Commencement Date:	Ss 3–8 on 23.10.19: s. 2(1)
Current State:	This information relates only to the provision/s amending the **Fisheries Act 1995**

Primary Industries Legislation Amendment Act 2019, No. 40/2019

Assent Date:	6.11.19
Commencement Date:	Ss 11(2), 12–30, 34–37, 39 on 17.12.19: Special Gazette (No. 537) 17.12.19 p. 3; ss 10, 11(1)(3), 31−33, 38 on 1.2.20: s. 2(2)
Current State:	This information relates only to the provision/s amending the **Fisheries Act 1995**

Local Government Act 2020, No. 9/2020

Assent Date:	24.3.20
Commencement Date:	S. 390(Sch. 1 item 42) on 6.4.20: Special Gazette (No. 150) 24.3.20 p. 1
Current State:	This information relates only to the provision/s amending the **Fisheries Act 1995**

Transport Legislation Miscellaneous Amendments Act 2021, No. 30/2021

Assent Date:	10.8.21
Commencement Date:	Ss 87, 88 on 3.11.21: Special Gazette (No. 578) 19.10.21 p. 1
Current State:	This information relates only to the provision/s amending the **Fisheries Act 1995**

Justice Legislation Amendment (Criminal Procedure Disclosure and Other Matters) Act 2022, No. 1/2022

Assent Date:	15.2.22
Commencement Date:	S. 93 on 29.3.22: Special Gazette (No. 157) 29.3.22 p. 1
Current State:	This information relates only to the provision/s amending the **Fisheries Act 1995**

Statute Law Amendment (References to the Sovereign) Act 2023, No. 25/2023

Assent Date:	5.9.23
Commencement Date:	S. 7(Sch. 1 item 13) on 6.9.23: s. 2
Current State:	This information relates only to the provision/s amending the **Fisheries Act 1995**

Bail Amendment Act 2023, No. 28/2023

Assent Date:	24.10.23
Commencement Date:	Ss 69, 118 on 25.3.24: s. 2(2)
Current State:	This information relates only to the provision/s amending the **Fisheries Act 1995**

Justice Legislation Amendment (Integrity, Defamation and Other Matters) Act 2024, No. 31/2024

Assent Date:	10.9.24
Commencement Date:	S. 113(Sch. 1 item 13) on 10.2.25: Special Gazette (No. 648) 26.11.24 p. 1
Current State:	This information relates only to the provision/s amending the **Fisheries Act 1995**

3 Explanatory details

No entries at date of publication.